THE JURISDICTION OF THE ADMIRALTY OF ENGLAND ASSERTED.

BY

RICHARD ZOUCH,

Doctor of the Civil Laws, and late Judge of the High Court of *ADMIRALTY*.

LONDON,

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TO THE READER.

I *Do certifie and atteſt, that the Treatiſe Entituled,* The Juriſdiction of the High Court of Admiralty Aſſerted, *&c. by* Dr. ZOUCH, *was delivered into my Hands by the* AUTHOR *Himſelf, to be Printed; and which he intended to have Dedicated to His Royal Highneſs* JAMES Duke of YORK, &c. *Lord High Admiral of* England.

Doctors Commons,
Febr. 25. 1663.

Tim. Baldwyn.

ASSERTIONS
CONCERNING THE
Juriſdiction of the Admiralty
OF
ENGLAND.

1. THat in all places where Navigation and Trade by Sea have been in Uſe and Eſteem, and particularly in *England*, Special Laws have been provided, for regulating the ſame.

2. That in all places where Laws have been provided for Buſineſſes concerning the Sea, as alſo in *England*, Special Judges have been appointed, to determine Differences, and to redreſs Offences concerning the ſame.

3. That in all places where Special Judges have been appointed for Sea-Affairs, as alſo in *England*, certain Cauſes, *viz.* All ſuch as have relation to Navigation, and Negotiation by Sea, have been held proper for their Conuſance.

4. That the Juriſdiction of the Lord High Admiral of *England*, as it is granted by the King, and uſually exerciſed in the Court of Admiralty, may conſiſt with the Laws and Statutes of the Realm.

5. That the Lord Admiral of *England* may hold Conuſance of Contracts, and Writings made at Land, touching Buſineſſes of Navigation, and Trade by Sea.

6. That the Admiral of *England* may hold Conuſance of things done in Ports, and Navigable Rivers, as touching Damage done to Perſons, Ships and Goods, Annoyances of free Paſſages, and unlawful Fiſhing.

7. That the Lord Admiral of *England* may hold Pleas of Contracts, and other things done beyond the Sea, relating to Navigation, and Trade by Sea.

8. That the Courts and Judges of the Common-Law do intermeddle with, and interrupt the Court of Admiralty, in Cauſes properly belonging to that Court.

9. That the Tryal of Cauſes concerning Navigation and Trade, in the Court of Admiralty, is more commodious for the Kingdom, and the Subjects thereof, than in the Courts of Common-Law.

Sir

Sir Edward Coke's JURISDICTION OF COURTS.

CHAP. XXII.

The Court of the Admiralty proceeding according to the Civil Law.

THE Complaint of the Lord Admiral of England, to the King's moſt Excellent Majeſty, againſt the Judges of the Realm, concerning Prohibitions granted to the Court of the Admiralty, 11 Febr. penultimo die Termini Hillarii, Anno 8. Jac. Regis: The Effect of which Complaint was after, by His Majeſty's Commandment, ſet down in Articles by Dr. Dun, Judg of the Admiralty, which are as followeth, with Anſwers to the ſame by the Judges of the Realm; which they afterwards confirmed by three kinds of Authorities in Law: 1. By Acts of Parliament. 2. By Judgments, and Judicial Proceedings. And Laſtly, By Book-Caſes. *Articuli Admiralitatis.*

The Proceſs and Proceedings in this Court are in the name of the Lord Admiral,

Certain

The Title of the Complaint.

Certain Grievances, whereof the Lord Admiral, and his Officers of the Admiralty, do especially complain, and desire Redress.

Object. 1. THat whereas the Conusance of all Contracts, and other things done upon the Sea, belongeth to the Admiral-Jurisdiction, the same are made tryable at the Common-Law, by supposing the same to have been done in *Cheapside*, or such places.

Answer. *By the Laws of this Realm, the Court of the Admiral hath no Conusance, Power, or Jurisdiction of any manner of Contract, Plea, or Querele, within any County of the Realm, either upon the Land, or Water; but every such Contract, Plea, or Querele, and all other things rising within any County of the Realm, either upon Land, or Water, and also Wreck of the Sea, ought to be tryed, determined, discussed and remedied by the Laws of the Land; and not before, or by the Admiral, or his Lieutenant, in any manner: So as it is not material whether the place be upon the Water,* infra fluxum, & refluxum aquæ; *but whether it be upon any Water within any County. Wherefore we acknowledge, that of Contracts, Pleas and Quereles, made upon the Sea, or any part thereof, which is not within any County (from whence no Tryal can be had by Twelve Men) the Admiral hath, and ought to have Jurisdiction. And no Prefident can be shewed, that any Prohibition hath been granted, for any Contract, Plea, or Querele, concerning any Marine Cause made or done upon the Sea, taking that only to be the Sea, wherein the Admiral hath Jurisdiction, which is before by Law described to be out of any County. See more of this matter in the Answer to the sixth Article.*

Object. 2. When Actions are brought in the Admiralty, upon Bargains or Contracts made beyond the Seas, wherein the Common-Law cannot administer Justice; yet in these Causes, Prohibitions are awarded against the Admiral-Court.

Answer. *Bargains or Contracts made beyond the Seas, wherein the Common-Law cannot administer Justice, (which is the effect of this Article) do belong to the Constable and Marshal; for the Jurisdiction of the Admiral is wholly confined to the Sea, which is out of any County. But if any Indenture, Bond, or other Specialty, or any Contract, be made beyond Sea, for doing of any Act, or Payment of any Money, within this Realm, or otherwise, wherein the Common-Law can administer Justice, and give ordinary Remedy; in these Cases, neither the Constable and Martial, nor the Court of the Admiralty, hath any Jurisdiction. And therefore, when this Court of the Admiralty hath dealt therewith, in Derogation of the Common-Law, we find, that Prohibitions have been granted, as by Law they ought.*

See hereafter in the Proof by Judgments and Judicial Presidents.

Object. 3. Whereas, time out of mind, the Admiral-Court hath used to take Stipulation for Appearance, and Performance of the Acts and Judgments of the same Court, it is now affirmed by the Judges of the Common-Law, that the Admiral-Court is no Court of Record, and therefore not able to take such Stipulations: And hereupon Prohibitions are granted, to the utter Overthrow of that Jurisdiction.

Answer. *The Court of the Admiralty, proceeding by the Civil Law, is no Court of Record; and therefore cannot take any such Recognizance as a Court of Record may do. And, for taking of Recognizances against the Laws of the Realm, we find, that Prohibitions have been granted, as by Law they ought: And if an Erronious Sentence be given in that Court, no Writ of Error, but an Appeal to certain Delegates, does lye; as it appeareth by the Sta-*

8 Eliz. Cap. 5. *tute of* 8 Eliz. Reginæ Cap. 5. *which proveth, that it is no Court of Record.*

That

That Charter-parties made only to be performed upon the Seas, are daily withdrawn from that Court by Prohibitions. Object. 4.

If the Charter-party be made within any City, Port, Town, or County of this Realm, although it be to be performed either upon the Seas, or beyond the Seas, yet is the ſame to be tryed and determined by the ordinary Courſe of the Common-Law, and not in the Court of the Admiralty: And therefore, when that Court hath incroached upon the Common-Law, in that caſe the Judge of the Admiralty, and Party ſuing there, have been prohibited, and oftentimes the Party condemned in great and grievous Damages by the Laws of the Realm. Anſwer.

That the Clauſe of *Non obſtante ſtatuto*, which hath Foundation in His Majeſty's Prerogative, and is current in all other Grants; yet, in the Lord Admiral's Patent, is ſaid to be of no force to warrant the Determination of the Cauſes committed to him in his Lordſhip's Patent, and ſo rejected by the Judges of the Common-Law. Object. 5.

Without all queſtion the Statutes of 13 R. 2. Cap. 3. 15 R. 2. Cap. 5. & 2 H. 4. Cap. 11. *being Statutes declaring the Juriſdiction of the Court of the Admiral, and wherein all the Subjects of the Realm have Intereſt, cannot be diſpenced with by any* Non obſtante, *and therefore not worthy of any Anſwer; but by colour thereof the Court of the Admiralty hath, contrary to thoſe Acts of Parliament, incroached upon the Juriſdiction of the Common-Law, to the intollerable Grievance of the Subjects; which have oftentimes urged them to complain in Your Majeſty's Courts of ordinary Juſtice, at* Weſtminſter, *for their Relief in that behalf.* Anſwer. 13 R. 2. cap. 3. 15 R. 2. cap. 5. 2 H. 4. cap. 11.

To the end that the Admiral-Juriſdiction may receive all manner of Impeachment and Interruption, the Rivers beneath the firſt Bridges, where it ebbeth and floweth, and the Ports and Creeks are, by the Judges of the Common-Law, affirmed to be no part of the Seas, nor within the Admiral-Juriſdiction; and thereupon Prohibitions are uſually awarded upon Actions depending in that Court, for Contracts and other things done in thoſe places, notwithſtanding that by uſe and practice, time out of mind, the Admiral-Court have had Juriſdiction within ſuch Ports, Creeks and Rivers. Object. 6.

The like Anſwer as to the firſt. And it is further added, that for the Death of a Man, and of Mayhem (*in thoſe two Caſes only*) *done in great Ships, being and hovering in the main Stream only, beneath the Points of the ſame Rivers, nigh to the Sea, and no other place of the ſame Rivers, nor in other Cauſes, but in thoſe two only, the Admiral hath Cognizance. But for all Contracts, Pleas and Quereles made or done upon a River, Haven, or Creek, within any County of this Realm, the Admiral, without queſtion, hath not any Juriſdiction; for then he ſhould hold Plea of things done within the Body of the County, which are Tryable by the Verdict of Twelve Men, and meerly determinable by the Common-Law, and not within the Court of Admiralty according to the Civil-Law; for that were to change and alter the Laws of the Realm, in thoſe Caſes, and make thoſe Contracts, Pleas and Quereles tryable by the Common-Laws of the Realm to be drawn* ad aliud examen, *and to be ſentenced by the Judge of the Admiralty, according to the Civil-Laws. And how dangerous and penal it is for them to deal in theſe Caſes, it appeareth by Judicial Preſidents of former Ages. See the Anſwer to the firſt Article.* Anſwer.

That the Agreement made in *Anno Dom.* 1575. between the Judges of the King's Bench, and the Court of Admiralty, for the more quiet and certain Execution of Admiral-Juriſdiction, is not obſerved as it ought to be. Object. 7.

The ſuppoſed Agreement mentioned in this Article hath not as yet been delivered unto us; but having heard the ſame read over before His Majeſty (out of a Paper not ſubſcribed with the Hand of any Judge) we anſwer, That for ſo much thereof as differeth from theſe Anſwers, it is againſt the Laws and Statutes of this Realm; and therefore the Judges of the King's Bench never aſſented thereunto, as is pretended; neither doth the Phraſe thereof agree with the Terms of the Laws of the Realm. Anſwer.

Many

Object. 8. Many other Grievances there are, which, in diſcuſſing of theſe former, will eaſily appear worthy alſo of Reformation.

Anſwer. *This Article is ſo general, as no particular Anſwer can be made thereunto: Only it appeareth by that which hath been ſaid, That the Lord Admiral his Officers and Miniſters, principally by colour of the ſaid void* Non obſtante, *and for want of Learned Advice, have unjuſtly incroached upon the Common-Laws of this Realm; whereof the Marvel is the leſs, for that the Lord Admiral, his Lieutenants, Officers and Miniſters have, without all Colour, incroached and intruded upon a Right and Prerogative due to the Crown, in that they have ſeized, and converted to their own uſes, Goods and Chattels of infinite value, taken by Pyrats at Sea, and other Goods and Chattels which in no ſort appertain unto his Lordſhip, by his Letters Patents, wherein the ſaid* Non obſtante *is contained, and for which he and his Officers remain accountable to His Majeſty: And they now wanting, in this bleſſed time of Peace, Cauſes appertaining to their natural Juriſdiction, they now incroach upon the Juriſdiction of the Common-Law, leſt they ſhould ſit idle, and reap no profit: And if a greater number of Prohibitions (as they affirm) have been granted ſince the great benefit of this happy Peace, than before, in time of Hoſtility, it moveth from their own Incroachments upon the Juriſdiction of the Common-Law. So that they do not only unjuſtly incroach, but complain alſo of the Judges of the Realm, for doing of Juſtice in theſe Caſes.*

The particular Authorities promiſcuouſly alledged by Sir Edward Coke, *are diſtinctly inſerted in the Chapters following, in ſuch places as they ſeem to concern.*

THE

THE JURISDICTION OF THE Admiralty of England ASSERTED.

ASSERT. I.

That in all places where Navigation and Trade by Sea have been in uſe and eſteem, and particularly in England, *ſpecial Laws have been provided for regulating the ſame.*

LA Mer a ſes loix comme la terre, The Sea (ſaith *Godfrey*, a learned Author) *hath its Laws as well as the Land.* And it is certain, that Navigation was no ſooner invented, and Men had Experience of the Commodity proceeding from Negotiation by Sea, but they eſtabliſhed Laws for the maintaining and regulating the ſame. So much may be confirmed by what is obſervable from the uſe and practice, firſt, of thoſe Nations and States which border on the Mediterranean Sea; and ſecondly, of thoſe which confine on the Weſtern Ocean, and the Seas Northward. *Commene ſur les Cutumes de Normandy Te de Verces.*

Touching the firſt; Amongſt the Grecians, the Inhabitants of the Iſle of *Rhodes* have been moſt eminent for their Policy in the Affairs of the Sea. *Cicero* ſaith, *Rhodiorum uſque ad noſtram memoriam Diſciplina navalis & gloria remanſit.* And *Conſtantinus Harmenopulus*, a famous Judg at *Theſſalonica*, and Conſervator of the Law there, gives that Credit to their Laws, that he affirms, Τὰ ναυτικὰ πάντα καὶ ὅσα κατὰ θάλασσαν, &c. *All Buſineſſes concerning Navigation, and all Cauſes concerning things done at Sea, are decided by the* Rhodian *Laws; for the Laws of the* Rhodians *are, of all Sea-Laws, the moſt ancient.* Thoſe Sea-Laws of the *Rhodians*, or ſome part of them, are extant, publiſhed in Greek and Latin, by *Symon Schardius*, and *Marquardus Freherus*; and out of them related by *Mariſotus*, in the firſt part of his *Orbis Maritimus*. *Orat. pro Lege Manilia.* *Procheion l. 2. te. 11.*

The *Romans*, who, in the beginning of their Republick, received their Laws of the *Twelve Tables* from the *Athenians*; under the Empire, when their State was at the higheſt, and abundantly furniſhed with Laws for other matters, in the time of *Tiberius Claudius*, admitted the *Rhodian* Laws for the regulating of the Affairs of the Sea: Whereupon, when one *Eudæmon*, a Merchant of *Nicomedia*, complained to the Emperor *Antoninus*, that he, with others, had ſuffer'd Shipwreck, and were ſpoiled of their Goods by certain Officers of the Iſland called *Cyclades*; the Emperor anſwered him, Ἐγὼ μὲν τοῦ κόσμου κύριός, *That indeed he was Lord of the World*, that is to *L. Deprecatio D. de l. Rhod.*

say, *of the Land, or Continent, but that the Businesses and Rights of the Sea had a special Rule set down in the* Rhodian *Laws, to which he did refer them.*

De Dominio Maris, l.1. c.10.

These *Rhodian* Laws, as Mr. *Selden* observes, were afterwards inserted into the Body of the Civil Laws, by the Emperor *Justinian* and others; and were in high esteem both in the *Roman* and *Greek* Empire. The Titles to which they are reduced in the Civil Law are collected by *Petrus Peckius*, who hath commented upon them: And are likewise set forth by *Morisotus*: And, as they were in use in the *Greek* Empire, they are set out by *Leunclavius*, amongst the *Basilica*, or Laws from *Rome* received at *Constantinople*.

Orbis maritimi. l.1. c.30.

The Wisdom and Equity of the *Roman* Civil Laws, in process of time, have been received and allowed in all Nations and States of *Europe*, for the regulating and determining of Businesses at Sea, as it plainly appears in all Authors of several Nations, who have written of, or handled matters of that nature. To which have been added, divers Ordinances and Constitutions of their own, for Confirmation of those Laws, and Supply, where it seemed necessary: So the Provinces and places bordering on the Mediterranean Seas, according to former Usages and Customs, and upon new emergent Occasions, established several Orders and Constitutions for Maritime Businesses, which some eminent Persons residing at *Amalphia* (a Town in the Kingdom of *Naples*) reduced into a Monument, called *Tabula Amalphitana*; of which *Marinus Frecria* writes; *In succeeding Times, Maritime Businesses were not determined only by the* Rhodian *Laws; but Suits and Controversies touching matters of the Sea, were determined by the Law which is contained in the Table of* Amalphia *unto this day.*

Tract. de Navigat. & Mercatura.

De Subfeudis Tit. de Officio Admiralli.

The like was done by the People of *Venice*, *Morea*, or *Peloponnesus*, *Rome*, *Genoa Marsellis*, *Aragon*, *Barcelona*, &c. Of all which places, the Constitutions are comprehended in the Book called *Il Consultate del Mare*; of which it is related in a distinct Chapter, *Questi sono buoni stablimenti, These are the good Constitutions and Customs which belong unto the Sea; the which, wise Men, passing through the World, have delivered to our Ancestors.*

Præfat. del Cont solato de c.44.

Touching the Nations confining on the Western and Northern Ocean, it appears likewise, That in *Spain* there were special Laws and Ordinances provided for the Businesses of the Sea, for Occasions both of War and Peace; as in the *Partidas* of *Alphonsus* the Ninth, under the Title of *De los navios*, and under the Title *De la guerre per la mer*, and under the Title *De los navios*, in the Recopilation of *Philip* the Second; which are illustrated by the Comment of *Alphonsus*, *Azevedo*, and others.

Partid.5. & 9.

So the *French*, for Maritime Affairs, have divers Edicts or Ordinances, which are styled, *Reglements sur la fait de Admiralty*; which were established by *Charles* the Sixth, *Lewis* the Twelfth, *Francis* the First, and lastly by *Henry* the Third, most fully, upon Review of all former Acts; which were afterwards ratified by the Court of Parliament at *Paris*: But, for ordinary matters of Navigation, and Trade at Sea, the Laws, or Judgments of *Oleron* (which is an Island scituate at the Mouth of the River *Charenton*, near the Coast of *Aquitain*) are of special Observation in that Kingdom, as appears by an ancient Record, extant amongst the Royal Edicts, intituled *Droits & preminences del Admiral*, wherein it is declared, *That the Admiral ought to do Justice to all Merchants, according to Rights, Judgments,* &c. *and Usages of* Oleron. And *Grotius* affirms, *That as the* Rhodian *Laws, in the* Mediterranean *Seas, were reputed as the Laws of Nations, so in* France *are the Laws of* Oleron: And saith further in that place, *That in what esteem the Laws of* Oleron *have been in* France, *the same have* Leges Wisbuiences *amongst the Nations beyond the* Rhine; which, if *Welwood* mistakes not, are the same with the Laws of *Oleron*, translated into Dutch for the use of the Sea-Coasts in those parts.

Fontavon les Edicts de France, Tom.3.

Artic.19.

Flores sparsæ ad l. deprecatio.

Abridg. of Sea-Laws. c.

Malines, in his *Lex Mercatoria*, sets forth a Catalogue of the Laws of the Hanse Towns. And *Loccenius*, in his Preface to his Book, *de Jure Maritimo*, mentions, *Jus nauticum Sueficum*, and *Leges Wisbuiences*; which, he saith, are observed both in the Hanse-Towns; and in the Northern Kingdoms; and also the Ordinances of the Hanse-Towns themselves, and of the Belgick Commonwealth.

Part. 1. c.

It

It is likewiſe apparent, that the Kingdom of *England* is not deſtitute of ſpecial Laws for the regulating of Sea-buſineſſes, which are diſtinct from the Common Laws of the Realm; as namely, the *Civil Law*, and others, of which the Books of Common Law take notice by the names of *Ley Merchant*, and *Ley Mariner*.

Touching the Civil Law, how it is obſerved in the Admiralty of *England*, Sir *Edward Coke* ſhews, in his Comment upon *Littleton*, where he mentions divers Laws which are in uſe in this Kingdom. And Mr. *Selden*, in his Diſſertation, *ad Fletam*, ſays, *Juris Civilis, vel Cæſarii uſus ab antiquis ſeculis etiam num retinetur in foro Maritimo, ſeu curia Admiralitatis.* And accordingly, in the time of King *Edward* the Sixth, when Monſieur *Villandry* being employed for the King of *France*, upon occaſion of ſome Differences happening betwixt the Subjects of *England* and of *France*, concerning Sea-buſineſſes, ſignified, that the King his Maſter was deſirous that the Ordinances and the Cuſtoms of *England* might be reduced into one Form, without any difference betwixt them and the *French*. Anſwer was made, That the *Engliſh* Ordinances for Marine Affairs were no other than the Civil Laws, and certain ancient Additions of the Realm; wherein they could not conceive any reaſon or convenience of Change.

ad Sect. 3.

Sir John Hayward, *in the Life of* Ed. 6.

The Law-Merchant is likewiſe mentioned, and allowed by Sir *Edward Coke*, in his Comment upon *Littleton*, as a Law diſtinct from the Common Law of *England*. And ſo doth Mr. *Selden* mention it, in his Notes upon *Forteſcue*. And Sir *John Davis* more fully owns it in a Manuſcript-Tract touching Impoſitions; where he affirms, *That both the Common Law and Statute-Laws of* England *take notice of the Law-Merchant, and do leave the Cauſes of Merchants to be decided by the Rules of that Law: Which Law-Merchant, he ſaith, as it is part of the Law of Nature and Nations, is univerſal, and one and the ſame in all Countries of the World: For, as* Cicero *ſaith of that Law, Non erit alia lex Romæ, alia Athenis, alia nunc, alia poſt hæc, ſed & omnes gentes, & omni tempore una eademque lex obtinebit.* Whereby it is manifeſt, that the Cauſes concerning Merchants are not now to be decided by the peculiar and ordinary Laws of every Country, but by the general Laws of Nature and Nations. He ſaith further, 'That until he underſtood the difference betwixt the Law-Merchant 'and the Common Law of *England*, he did not a little marvel, that *England*, enter-'taining Traffick with all Nations of the World, having ſo many Ports, and ſo much 'good Shipping, the King of *England* alſo being Lord of the Sea, what ſhould be 'the cauſe that, in the Books of the Common Law of *England*, there are to be found 'ſo few Caſes concerning Merchants or Ships: But now the reaſon thereof was ap-'parent, for that the Common Law of the Land did leave thoſe Caſes to be ruled 'by another Law; namely, the Law-Merchant; which is a Branch of the Law of 'Nations.

ad Sect. 3.

c. 32. *p.* 39.

Offic. 3.

The Law-Mariner, to which haply, the Anſwer to the *French* Agent, mentioning ancient Additions of the Realm, related, were ſuch things as are contained and preſerved in the ancient black Book of the Admiralty; as certain Royal Ordinances, made by ancient Kings of the Realm. 2. The Judgments, or Reſolutions of *Oleron*, in the time of King *Richard* the firſt. 3. Certain Verdicts given upon an Inquiſition at *Quinborough*, in the time of King *Edward* the Third: And ſome other Matters touching the Admiralty of *England*.

Touching the black Book of the Admiralty, Mr. *Selden* ſtyles it, *Vetuſti Tribunalis Maritimi Commentarii*; and *Codex Manuſcriptus de Admiralitatu*. And, in his Notes upon *Forteſcue*, he ſaith, That there are in it, worthy of Obſervation, Conſtitutions touching the Admiralty of *Henry* the Firſt, *Richard* the Firſt, King *John*, and *Edward* the Firſt.

De Dom. Maris, l. 2. *c.* 28.

Ad cap. 32.

Touching the Judgments, or Laws of *Oleron*, and the uſe of them in the Admiralty-Court, Mr. *Selden*, where he, from them, argues the Sovereignty of the Kings of *England*, in regard King *Richard* the Firſt did publiſh the Sea-Laws in the Iſland of *Oleron*, which was then in his poſſeſſion, ſays, *That they are ſtill in force.* And Sir *Edward Coke* likewiſe argues, That the Juriſdiction of the Lord Admiral was long

De Dom. Maris, p. 254.

Comment on Littl. Sect. 234.

before the Reign of *Edward* the Third, from the Laws of *Oleron*; *So called, becauſe they were there made by King* Richard *the Firſt.*

The Inquiſition at *Quinborough* was taken in the Year 1376. in the 49th. of King *Edward* the Third, by eighteen expert Sea-men, before *William Nevill* Admiral of the North, *Philip Courtny* Admiral of the Weſt, and the Lord *Latimer*, Warden of the Cinque Ports; and relates, as by the Title appears, to the Uſages of former times. The Verdicts there given were deſired to be eſtabliſhed by the King's Letters Patents, in the Cinque Ports, and Towns adjoyning to the *Thames*, to be obſerved by the Owners, Maſters and Mariners of Ships, under Penalties, &c. And *Malines* writes, *That he had ſeen them inrolled amongſt the Records of the Tower, for the Government of the Admiralty.*

Part. 1. c. 17.

ASSERT. II.

That generally where Laws *have been provided for* Buſineſſes *concerning the* Sea, *as alſo in* England, *ſeveral Judges have been appointed to determine* Differences, *and redreſs* Offences *concerning the ſame.*

Syntag. lib. 47. cap. 37.

Gregorius Tholoſanus ſays, *Judicum diverſorum ratio eo dirigitur, ut lites facilius expediantur, ne immortales ſint ſub judicibus mole negotiorum occupatis & proinde cum commercia hominum ſint maximæ utilitatis, placuit Negotiatoribus proponi proprios Judices.* And accordingly,

Firſt, The *Grecians* had their ſpecial and proper Judges appointed for thoſe Buſineſſes: So *Suidas*, Ναυλοδίκαι ἄρχοντες, &c. *The* Natodicæ *were Magiſtrates who did Juſtice to Sea-men, and others, who trade by Sea.* And the *Athenians* had an expreſs Law to that purpoſe, Τὰς δίκας τὰς περὶ τῶν ἐμπορίων, &c. *That Actions concerning Sea-men and Merchants ſhould be commenced before the Judges called* Theſmothetæ, *according to their Inſtruments of Contracts and Dealings.*

Petit. de Legib. Atticis.

In Verrem 7. Decad. 3. lib. 3. cap. 46. Ad Senatus Trebes. l. 14. 1. ult. C. de Commercii.

Secondly, Amongſt the *Romans* there was anciently an Officer called *Præfectus Claſſis* by *Tully* and *Livy*. And *Javolenus* makes mention of *Seius Saturninus Archigubernius Claſſis Britannicæ*: And *Tacitus*, of *Prætor Claſſis*: Which Name imports a power of Judicature. In later times they had alſo a Magiſtrate who was called *Comes Commerciorum*, whoſe Office was, to over-ſee Matters of Commerce or Negotiation.

Thirdly, The *Roman* Empire being broken into ſeveral States, the leſſer, as Republicks, had their Conſuls, and the greater Kingdoms had their Admirals, to order and determine thoſe Buſineſſes. The Office of the Conſuls is deſcribed in the *Conſolato del Mare, Conſoli determinano tutti le controverſie*, &c. *The Conſuls determine all Controverſies which are for Fraights, for Dammages done to Goods on Shipboard, for parts of Ships to be ſet to Sale at an Out-cry, for Commiſſions given to Maſters and Mariners, for Debts contracted by Maſters for the neceſſary uſe of the Ship, for things promiſed or undertaken betwixt Merchants and Mariners, for Goods taken up at Sea; and generally, for all other Contracts and Buſineſſes which are declared amongſt the Cuſtoms of the Sea.*

Cap. 20.

Moriſonn, l. 2. c. 27.

Fourthly, The *Venetian* State being a Seigniory, when any great War is expected, or undertaken, have their General, or Supream Commander of the Navy, who is of as high an Eſteem as any Magiſtrate of the City; having abſolute Power over all Officers, and others, of the Navy: At other times the *Legatus Claſſis*, or Vice-General

neral hath the power of diſpoſing of the Navy, and over the Captains of the Gallies, and other Perſons of the Navy. They have beſides, four Conſuls, who judg and determine all Matters concerning Negotiation and Trade. *Sanſovinus lib. 17.*

Fifthly, Admirals in *Europe* had their Beginning (as moſt affirm) in the time of *Conſtantine* the Emperor, and that in *Magna Græcia*, which is now the Kingdom of *Naples*, where the Dignity of Admiral is the third Place; to wit, after the Vice-Roy and Conſtable; to whom belongeth the Building, Repairing and Keeping of the Ships Royal, and ſetting out of the Fleets for War, with the King's Conſent. He hath alſo Juriſdiction, Civil and Criminal, amongſt Commanders, Officers and others, employed about the Navy, and all others who get their Livelihood by the Induſtry and Art of the Sea; which are held to be ſuch which tranſport in Ships, and adventure their Eſtates by Sea: As alſo, ſuch that make it their Trade to Fiſh, or do build Ships. This Court is called *Magna Curia*; and from it there lies an Appeal only to the Supream Council. *Garſias Maſtrilli* ſays, He hath all Juriſdiction, both Civil and Criminal, in Maritime Cauſes, excluſive to all others. *Chaſſan. Catal. p. 9. conſ. 26.* *Freeca de Offic. Admir.*

The King of *Spain* hath divers other Admirals, both in *Europe*, and the *Indies*, of equal Power. *Marinus Siculus* ſaith of the Admiral of *Caſtile*, That he is next unto the Conſtable, and hath ſupream Authority over all that uſe the Sea; and is held to be the Lord, and Chief Commander of the Sea: As it is alſo largely deſcribed in the *Partidos*. Beſides, for the diſpatch of ordinary Maritime Buſineſſes, by the ſame Laws, Judges are appointed to reſide in Port-Towns, and other places on the Sea-Coaſts, which are to hear the Cauſes of Sea-men, concerning Freight of Ships, and Contributions for Goods caſt over-board, or any other Matter: Which Judges were to proceed plainly, without Solemnities, and with all Expedition, *&c.* *Moris, l. 2. c. 22.*

In *France*, by an Ordinance of *Henry* the Third, made upon a Survey of all other former Ordinances, ratified by the Parliament of *Paris*, the Office of the Admiral, in the King's Name, is thus declared: *Edit. per Fontan.*

Firſt, That of all Armies which ſhall be raiſed and ſet to Sea, the Admiral of *France* ſhall be chief, and our Lieutenant-General; and ſhall be obeyed in all Maritime Towns and Places, which are or may be, without Contradiction.

Secondly, He ſhall have Juriſdiction, Conuſance and Determination of all things done or committed on the Sea, or Shoars of the Seas; likewiſe of all Acts of Merchandize, Fiſhing, Freighting, or Letting to Freight, or Breach of Ships, of Contracts made touching the Matters aforeſaid, of Charter-parties, of Sea-briefs, and of all other things whatſoever happening upon the Sea, or Shoars thereof; as our Lieutenant-General alone, and to all purpoſes, in the places aforeſaid: Which Juriſdiction, Cognizance and Determination, we have interdicted to all other our Judges.

He ſhall hold his principal Court at the Marble Table, in the Palace at *Paris*, and ſhall appoint Judges Deputies in Maritime Cities and Towns, who ſhall hear ordinary Matters happening within their Circuits; and if any Buſineſs fall out worthy of greater Conſideration, they ſhall refer the ſame to him.

In *Denmark*, the third place of Dignity in the Kingdom belongs to the Admiral, who is commonly called Rycks Admiral; and, as *Moriſotus* writes, he hath the ſame Right and Power as the Admiral of *France*. *Tit. 2. c. 14.*

In *Scotland* (as *Wellwood*, a *Scotiſh* Man, writes) the Admiral, and Judg of the Admiralty hath power within the Sea-flood, over all Sea-faring Men, and in all Sea-faring Cauſes and Debates, Civil and Criminal: So that no other Judg of any degree may meddle therewith, but only by way of Aſſiſtance, as it was found in the Action brought by *Anthony de la Tour*, againſt *Chriſtian Martens*, *Novemb.* 6. 1542. *Abridg. c. 1.*

The Admiral of *England* (as Mr. *Selden* obſerves) hath another manner of Right, and Juriſdiction, than the Admiral of *France*, or other ordinary Admirals; for that the Juriſdiction over the Seas of *England* and *Ireland*, and the Dominions and Iſles of the ſame, as a Province, are committed to his Cuſtody and Tuition, as to a Preſident, to defend the ſame, as in the Dominion of the King, by whom he is authorized; the Bounds of which Juriſdiction are limited and determined in thoſe Seas. And beſides, *De Dom. Maris l. 2. c. 27.*

beſides, as the *French*, and other Admirals, he hath the power over the Navy, and the Government over the Sea-men, and Juriſdiction over the Perſons and moveable Goods which come under his Judicature, *pour raiſon ou occaſion del faie de la mer*: Which Juriſdiction hath no Bounds, but extends to the *Mediterranean*, *African* and *Indian* Seas, or any other far remote.

Juriſdiction, p.142.

What Mr. *Selden* delivers concerning the Admiral of *England*'s Special Juriſdiction, in the firſt reſpect, is confirmed by an ancient Record in *French*, in *Archivis* of the Tower of *London*, ſet out at large by Sir *Edward Coke*; the effect and tenour whereof is, That whereas, during the Wars between *Philip* King of *France*, and *Guy* Earl of *Flanders*, *Reginerus Grimbaldus*, Admiral of the *French* Navy, had ſpoiled the Merchants of divers Nations, ſailing towards *Flanders*, in the *Engliſh* Seas; and Commiſſioners being appointed by the two Kings, to hear and redreſs the Complaints concerning the ſame, the Deputies of the Prelates, Nobility and Commonalty of the Towns of *England*, and of divers Maritime Countries; as of *Genoua*, *Catalonia*, *Spain*, *Germany*, *Zeland*, *Holland*, *Frieſland* and *Norway* declare, That the Kings of *England*, by reaſon of that Realm, time out of mind, have been in peaceable Poſſeſſion of the Sovereign Dominion of the Sea of *England*, and of the Iſlands therein ſcituate, by ordering and eſtabliſhing Laws, Statutes and Countermands of Arms, and Veſſels otherwiſe furniſhed than for Merchandiſing, and by taking Security, and giving Protection in all Cauſes needful, and by ordaining all other things requiſite for the maintaining of Peace and Right amongſt all other People, as well of other Seignieuries, as of their own, paſſing through the ſame: And all manner of Cognizance and Juriſdiction, high and low, touching thoſe Laws, Statutes, Ordinances and Countermands, and all other Acts which may appertain to the Sovereign Dominion aforeſaid; and that *A.D.B.* Admiral of the Sea, deputed by the King of *England*, and all other Admirals appointed by him, and his Anceſtors, heretofore Kings of *England*, have been in peaceable Poſſeſſion of the ſaid Sovereign Protection; together with the Conuſance and Juriſdiction, and all things before-mentioned thereunto appertaining (except in caſe of Appeals to their Sovereign Kings of *England*, for default of doing Right, or giving wrong Judgment) and eſpecially in making Reſtraint, doing Juſtice, and taking Security for the Peace of all manner of People, bearing Arms on the Sea, or Ships ſailing otherwiſe apparelled, or furniſhed, than belongs to Ships of Merchandize; and in all other points in which a Man may have reaſonable Cauſe of Suſpition againſt them, touching Robbery, or other Miſdemeanours.

Beſides the Juriſdiction Extraordinary of the Admiral of *England*, concerning Protection againſt Depredations in the *Engliſh* Seas (as Mr. *Selden* writes;) his Ordinary Juriſdiction is over the Perſons and Goods moveable, which come under his Judicature by *occaſion of Buſineſſes relating to the Sea*, is not only agreeable to the Juriſdiction of the *French*, and other Admirals, but is alſo warranted by the King's Commiſſions; as it is apparent by ancient and later Patents, granted by the Kings of *England*, in which the Admirals of *Englands* Authority and Juriſdiction is expreſly and fully declared, as followeth; *Damus & concedimus, &c. We give and grant to* N. *the Office of Our Great Admiral of* England, Ireland *and* Wales, &c. *And We make, appoint and ordain him Governour-General of Our Navies and Seas of the Kingdoms aforeſaid. And be it further known, that We, of Our ſpecial Grace, and certain Knowledg, do give and grant to the ſame Our Great Admiral, and Governour of our Navies, all and all manner of Juriſdictions, Liberties, Offices, Fees, Profits, Preheminences and Privileges whatſoever belonging or appertaining.* So far is recited in the ſolemn Form of the Admiral's Commiſſion, by Mr. *Selden*, as ſufficient to his purpoſe; and then, ſaith he, follow many things, declaring that moſt ample Power and Juriſdiction; amongſt which is expreſſed, in Civil Cauſes, that to him it is granted, *Ad cognoſcendum de placitis, &c. To hold Conuſance of Pleas, Debts, Bills of Exchange, Policies of Aſſurance, Accounts, Charter-parties, Contractions, Bills of Lading, and all other Contracts, which may any ways concern Moneys due for Freight of Ships hired, and let to hire;*

Selden *lib.2. cap.16.*

hire; Moneys lent to be paid beyond the Seas, at the hazzard of the lender, and alſo of any Cauſe, Buſineſs, or Injury whatſoever had, or done, in or upon, or through the Seas, or publick Rivers, or freſh Waters, Streams, Havens, and places ſubject to overflowing, whatſoever, within the flowing and ebbing of the Sea, upon the Shoars or Banks whatſoever adjoyning to them, or either of them, from any the ſaid firſt Bridges whatſoever, towards the Sea, throughout Our Kingdoms of England *and* Ireland, *or Our Dominions aforeſaid, or elſewhere, beyond the Seas; or in any Ports beyond the Seas whatſoever,* With divers other Clauſes, containing Power of Coercion for the maintenance of that Juriſdiction.

By the Commiſſion of *Oyer* and *Terminer*, granted likewiſe under the Great Seal, according to the Statute of the 28th. of *Henry* the Eighth Chap. 15. and other Statutes, for the puniſhing of Offences and Matters Criminal, committed within the Juriſdiction of the Admiral, Power is granted in the Kings name, to hear, and determine *De omnibus & ſingulis proditionibus, &c. of all and ſingular Treaſons, Robberies, Murthers, Felonies and Confederacies, &c. as well in and upon the Sea, or any River, Port or Freſh-Water, Creek, or place whatſoever, within the flowing of the Sea to the full, beneath the firſt Bridges towards the Sea, as upon the Shoar of the Sea, or elſewhere within the King's Maritime Juriſdiction of the Admiralty of the Realm of* England, *and the Dominion of the ſame: As well againſt the Peace, and the Laws of the Land, as againſt the King's Laws, Statutes and Ordinances of the King's Court of Admiralty. And alſo touching all and ſingular other Matters which concern Merchants, Owners and Proprietaries of Ships, Maſters, Ship-men, Mariners, Ship-wrights, Fiſhermen, Work-men, Labourers, Sailors, Servitors, or any others.*

ASSERT. III.

That in all places where Judges have been appointed for Sea-buſineſſes, as alſo in England, *certain Cauſes,* viz. *ſuch as have relation to Navigation, and Negotiation by Sea, have been held proper for their Conuſance.*

MAritime Laws, ſaith *Godfrey*, *concern Perſons, or Dealings between Merchants and Sea-men*; which is agreeable to the ſubject matter of the ſeveral Laws mentioned in the firſt Chapter, and what appears to have belonged to the office of Maritime Judges. *Tit. de Varlet.*

Amongſt the Grecians, Cauſes happening betwixt Merchants and Sea-men were called, Δίκαι ἐμπόρικαι, *Cauſes concerning Trade, as* Julius Pollux; *and* Δίκαι περὶ ναυκλήρων, *as* Suidas *teſtifies.* The *Rhodian* Laws, although as they are now extant, are not ranked under diſtinct Heads or Titles, yet they may be reduced to theſe Particulars: As firſt, Concerning hiring and freighting of Ships. Secondly, Concerning tranſporting Paſſingers and Goods. Thirdly, Touching the delivery and diſcharging the things received in good Condition. Fourthly, Touching Contributions for Loſſes in common danger, and for Salvage of Goods. Fifthly, For borrowing and truſting of Money for Sea-voyages. Sixthly, Concerning Mariners Duties, their Wages, and the like. *Gnomat. verb.* Δίκαι.

The ſame were the Matters taken into Conſideration, when the *Roman* Senate entred into a Conſultation to ſettle the Buſineſs of the Sea: For when *Tiberius Claudius* had ſignified to them, that the Sea-men, and Merchants trading by Sea, had beſought *Jac. Godefred. Comment. ad l. Deprecatio.*

ſought him, that ſuch Buſineſſes which were incident to the Sea might be reduced into ſome Order; *Nero*, then a Senator, adviſed, that ſome might be ſent to the Iſle of *Rhodes*, who ſhould diligently enquire and take notice of what was there obſerved *concerning Mariners, Sea-men, Merchants, and Paſſingers Goods put on Board Ships, Partnerſhips, Building, Buying, or Selling of Ships, Intruſting Gold and Silver, and divers other things.* All which was done accordingly, as appears by the Titles of the *Roman* Civil Laws, into which the *Rhodian* Laws were incerted; and by the Laws touching Sea-affairs, which afterwards the *Greek* Empire received from the *Romans*, as in the Title *De Nauticis Obligationibus, &c. Touching the Obligations, or Duties of Mariners, and all manner of Actions which may be brought concerning Ships, or thoſe who ſail in Ships, Owners, Maſters, or Paſſengers: Moreover, touching Wrecks of Ships, Caſting forth of Goods, and Contributions; and alſo Fiſher-men and Fiſhing.*

Βασιλικ. l. 33.

The ſame Buſineſſes alſo are regulated by the Conſtitutions of the *Conſolato del Mare*, in which are contained the Statutes and Ordinances of ancient Authority, provided for all Cauſes of Merchandizing and Navigation, as it is more fully ſignified in a Chapter of that Book, *Nello progreſſo di queſto libro. In the progreſs of this Book it is declared, how the Maſters of Ships ought to demean themſelves towards Merchants, Mariners, Strangers, and all other ſorts of People, which paſs in their Ships; and alſo, how Merchants ought to perform with Maſters of Ships, and how Strangers and others ought to pay Freight for the tranſporting of their Perſons*, &c. All which are made good in the particular Ordinances and Conſtitutions therein contained.

Cap. 24.

The Sea-Laws in the *Spaniſh Partidaes* have the ſame ſcope, as it is in the Title, *We intend here to ſpeak of Shipping hired to undergo the Adventure of the Sea, and we will ſhew what things the Maſter of the Ship ought to obſerve towards the Merchants, and how the Dammage that ſhall happen to Goods caſt over-board by occaſion of Storm ought to be divided, and of the Price due for the Hire of Ships, and of other Matters which may concern the ſame Affair.*

Partid. 5. & 9.

So much is likewiſe ſignified in the Title of the Laws of *Oleron*, which, in the Edition annexed to the Cuſtoms of *Normandy*, are called, *Ordonances Royaul touchant le fait de la Mere*; as alſo Judgments, *de la mere, des nef, des Mariners, & auſſi des Marchants, & de tout leur eſtre*: And in the Edition ſet out by *Peter Garrias*, *La maniere comme les Maeſtres de Navire. The manner how Maſters of Ships, Merchants and Mariners ought to regulate and govern themſelves, according to the Judgments of the Roll of* Oleron.

Notwithſtanding theſe Examples of the Uſages of all other Nations, ſome amongſt us, as take upon them to determine, that to the Juriſdiction of the Admirals of *England*, no ſpecial, or certain Cauſes do belong: So the Lord *Hobard*, in *Audly* and *Jennings* Caſe, affirms, That their Juriſdiction is not in reſpect of any certain Cauſes, as the Cauſes of Tithes and Teſtaments are in the Spiritual Court, but only in reſpect of Place; and no doubt but Sir *Edward Coke*, and others who talk ſo much of *Altum Mare*, are themſelves perſuaded, and would perſuade others, to be of that Opinion: But it is apparent, that it is not the Place only, but the nature of the Caſe, happening within ſuch a place, that makes the Juriſdiction: And therefore, if a Contract of Marriage, or a Teſtament, be made at Sea, the Admiral claims no Conuſance thereof; which he might do, if the place alone were ſufficient to give the Juriſdiction. And ſo *Godfrey*, in his Comment upon the Cuſtoms of *Normandy*, ſaith, *That the Juriſdiction of the Marſhal of* France, *and of the Admiral, are limited to certain Cauſes and Matters: Whereupon it followeth, that they cannot judg, but of things of which the Conuſance belongs unto them; for their Juriſdictions are not regulated only by the Territory or Place, but alſo by the Cauſes and Matters, over which a competent Power is granted unto them.* And ſo Juſtice *Reeves*, in an Argument in *Communi Banco*, delivered, That he differdd in Opinion from my Lord *Hobard*; and affirmdd, That the Cauſe, as well as the place, gave Juriſdiction; for, if a Man upon the Sea do ſeal a Leaſe, or an Obligation, the Common Law ſhall have the Juriſdiction, and not the Admiralty, becauſe the Cauſe is not Maritime. And this, he ſays, agrees with the Lord *Hobard* himſelf, in *Bridgman*'s Caſe. And

Tit. de Vareos.

Lenthal & alii contr. D. Will. Ruſſel & alii.

Serjeant

Serjeant *Callis*, in his Readings, doth acknowledg, *That the King rules on the Sea by the Laws Imperial, and the Roll of* Oleron, *and others: But that is*, ſaith he, *in the Cauſes of Shipping, and of Merchants and Mariners.* And whereas the Serjeant ſaith well; and I ſuppoſe no Man will deny but the Civil or Imperial Laws, the Roll of *Oleron*, and others (by which, I ſuppoſe, may be underſtood, the Articles of the Inquiſition of *Quinborough*) are of force in the Admiralty of *England*. For further Illuſtration, that there are certain Cauſes properly belonging to the Conuſance and Juriſdiction of the Admiralty-Court of *England*, it may be more particularly deduced and ſhewed from theſe ſeveral and reſpective Authorities.

And firſt, As touching the particular Cauſes which may be deduced from the Civil Laws, ſome things have been already ſhewed, out of what the *Romans* derived from the *Rhodian* Laws; and if any will be further ſatisfied, he may find it perſpicuouſly declared in a Tract, *De Jure & Judicio Maritimo*, wherein the particular Cauſes, not only Civil, but alſo Criminal, concerning Navigation and Negotiation by Sea, are ſummarily ſet down, with relation to the Text of the Civil Laws.

And touching the Laws of *Oleron*, which are leſs obvious, it may be obſerved, that the particular Caſes therein are; as firſt,

Touching Ships hired for Sea-voyages, and their Proceedings in the ſame.

1. How Maſters and Mariners are to be ſatisfied, when the Merchant provides not his Goods ready, to be laden at the time agreed upon.
2. How the Maſter ought to conſult with his Company before he put out of the Harbour, and proceed with their Advice; and what he is liable unto, if he do otherwiſe.
3. How the Maſter ought to make Satisfaction when the Merchant is prejudiced by his ſtay in any place, and is not proceeding in the Voyage.
4. How the Maſter, in caſe his Ship be diſabled by ſome miſ-fortune, may repair it, or hire another; or, if the Merchant refuſe, what Fraight may be demanded.

Secondly, *Touching the ſafe keeping and delivering of Goods received into the Ships.*

1. How the Merchant ſhall be ſatisfied if his Goods be damnified in the Ship, by evil ſtowing, or other bad uſage; and how the Maſter and Company may clear themſelves.
2. How the Maſter and Company are liable unto the Merchant, if any Goods brought into the Port of Diſcharge, miſcarry in the Unlading, by occaſion of the Tackling or Cordage, which are found unfit.

Thirdly, *Touching the Engaging of Ships or Goods in caſe of neceſſity.*

1. Whether the Maſter, wanting means to proceed in his Voyage, may ſell or diſpoſe of the Ship, without Commiſſion from the Owners; and how, and in what Caſe he may engage ſome Tackle, or Furniture of the Ship.
2. How far, in caſe of neceſſity, the Maſter may intermeddle with the Merchant's Goods; and, if he diſpoſe of any, how he is to make Account, and give Satisfaction.

Fourthly, *Touching Contributions to be made for Loſs, upon occaſion of common Danger.*

1. How the Maſter, with Advice of thoſe in the Ship, or otherwiſe, in extremity of Tempeſt, may caſt out ſome Mens Goods, to ſave themſelves and the reſt; and how Average, or Contribution is to be made.

2. How the Maſter, in the Tempeſt, cutting down his Maſt, and caſting it overboard, to ſave the Ship and Goods, ought to have Satisfaction from thoſe, whoſe Goods were ſaved.

Fifthly, *Touching Damages done by, or betwixt ſeveral Ships.*

1. How and in what manner the Damage is to be born, when a Ship ſailing into a Port, bruiſes or breaks another Ship riding there at Anchor.

2. How if two Ships riding at Anchor in a Haven, and the Water being low, the Maſter of the one obſerving ſome danger from the Anchor of the other, may give notice thereof to the Maſter of that Ship; and if he neglect to remove it, may cauſe it to be done by his own Company; and if he be hindred therein, and Damage done, what Reparation may be recovered.

Sixthly, *Touching the Charge for hiring of Pilots, and their Duty.*

1. The Maſter being bound by Charter-party to pay Pilotage, in what places, and how far he is bound thereunto.

2. How far the Pilot is liable to make Satisfaction of the Ship's Miſcarriage under his Charge; and whether he be bound, when he hath brought her into the Harbour, if ſhe miſcarry by miſ-placing there.

There be many other Caſes contained among theſe Judgments of *Oleron*, but theſe may ſuffice for our purpoſe.

As the Roll of *Oleron* doth contain Judgments or Verdicts, eſpecially in Civil Cauſes, which did belong to Maritime Judicature, ſo in the Inquiſition at *Quinborough* are preſented Matters Criminal, and Offences, concerning which anciently Enquiry hath been made in the Admiralty-Juriſdiction: Which may be reduced into theſe Heads; as,

Firſt, *Offences againſt the King and Kingdom*; as,

1. Of ſuch as did furniſh the Enemy with Victuals and Ammunition; and of ſuch as did traffick with the Enemies, without ſpecial Licence.

2. Of Traytors Goods detained in Ships, and concealed from the King.

3. Of Pirats, their Receivers, Maintainers and Comforters.

4. Of Murthers, Man-ſlaughters, Maims and Pety-felonies, committed in Ships.

5. Of Ships arreſted for the King's Service, breaking the Arreſt; and of Serjeants of the Admiralty, who for Money, diſcharge Ships arreſted for the King's Service; and of Mariners, who having taken Pay, run away from the King's Service.

Secondly, *Offences againſt the publick Good of the Kingdom*; as,

1. Of Ships tranſporting Gold and Silver.

2. Of carrying Corn Over-Sea without ſpecial Licence.

3. Of ſuch as turn away Merchandizes or Victuals from the King's Ports.

4. Of Fore-ſtallers, Regrators, and of ſuch as uſe falſe Meaſures, Ballances and Weights, within the Juriſdiction of the Admiralty.

5. Of ſuch as make Spoil of Wrecks, ſo that the Owners, coming within a Year and a Day, cannot have their Goods.

6. Of ſuch as claim Wrecks, having neither Charter nor Preſcription.

7. Of Wears, Riddles, Blind-ſtakes, Water-mills, *&c.* whereby Ships or Men have been loſt or indangered.

8. Of removing Anchors, and cutting of Buoy-Ropes.

9. Of ſuch as take Salmons at unſeaſonable times.

10. Of

10. Of ſuch as ſpoil the Breed of Oiſters, or drag for Oiſters and Muſſels at unſeaſonable times.

11. Of ſuch as fiſh with unlawful Nets.

12. Of taking Royal Fiſhes, *viz.* Whales, Sturgeons, Porpoiſes, *&c.* and detaining the one half from the King.

Thirdly, *Offences againſt the Admiral, the Navy, and Diſcipline of the Sea.*

1. Of Judges entertaining Pleas of Cauſes belonging to the Admiral; and of ſuch as, in Admiralty-Cauſes, ſue in the Courts of Common Law; and of ſuch as hinder the Execution of the Admiral's Proceſs.

2. Of Maſters and Mariners contemptuous to the Admiral.

3. Of the Admiral's Shares, of Weiſs or Derelicts, and of Deodands belonging to the Admiral.

4. Of Fletſon, Jetſon and Lagon, belonging to the Admiral.

5. Of ſuch as Freight Strangers Bottoms, where Ships of the Land may be had at reaſonable Rates.

6. Of Ship-wrights taking exceſſive Wages.

7. Of Maſters and Mariners taking exceſſive Wages.

8. Of Pilots, by whoſe ignorance Ships have miſcarried.

9. Of Mariners forſaking their Ships.

10. Of Mariners rebellious and diſobedient to their Maſters.

In the ſame ancient Book of the Admiralty there is a Copy of a more ancient Enquiry touching Admiral-Cauſes, wherein ſome things relate to Conſtitutions made by King *Richard* the Firſt, at *Grimesby*, (*viz.*) That Ships arreſted for the King's Service, breaking Arreſt, ſhall be confiſcated to the King: And by King *John*, at *Haſtings*; That no private Man ſhould appropriate to himſelf the benefit of any ſalt Waters, by Meers, Ridles, and the like; and that the ſame ſhould be pulled down.

And the Fiſhing, cryed common to all People, was likewiſe ordered by King *John*.

This may ſuffice to confirm, that there were certain ſpecial Cauſes, both Civil and Criminal, which did anciently belong, and properly, to the Conuſance of the Admiral; and to ſhew, that this Juriſdiction was not wholly confined only to the Sea.

ASSERT. IV.

That the Juriſdiction of the Admiral of England, *as it is granted by the King, and is uſually exerciſed in the Admiralty-Court, may conſiſt with the Statutes and Laws of this Realm.*

First, IT appears by ancient Record of the time of King *Edward* the First, *De ſuperioritate Maris*, that it was acknowledged by the Deputies of the Parliament of *England*, and of divers other Nations, That the Kings of *England*, and of divers other Nations, time out of mind, injoyned the Dominion and Soveraignty of the *Engliſh* Seas, by preſcribing Laws and Statutes for the preſerving Peace and Juſtice, and by exerciſing all kind of Authority in matters of Judicature, and all other things which may concern his Soveraignty in the ſame; which being granted, his power to depute a Magiſtrate or Officer to thoſe purpoſes, with ſo much of his Authority as he ſhall think fit, cannot be denied.

Secondly, That the Juriſdiction and Power granted by the King in his Letters Patents to the Admiral, is agreeable to Commiſſions anciently granted, and which have been paſſed from time to time by the King's learned Council, and by the Lord Chancellor, or the Lord Keeper for the time being, who have thereunto ſet the Great Seal; and that the Authority and Juriſdiction of the Conſtable and Marſhal is deſigned by Sir *Edward Coke*, by referring to Grants of thoſe Offices antiently made by many ſeveral Kings, with exception only to one irregular Precedent, in the time of King *Edward* the Fourth.

Juriſdiction of Courts, cap. 6. f. 127.

Thirdly, That Mr. *Selden* ſhews, that all the Patents of the Office of the Lord Admiral, from the beginning of Queen *Maries* time, to the time of King *Charles*, have been conceived after one and the ſame form and tenour; as, of *Edward* Lord *Clinton*, afterwards Earl of *Lincoln*, under King *Philip* and Queen *Mary*; of *Charles Howard* Lord *Effingham*, afterwards Earl of *Nottingham*, under Queen *Elizabeth*; of *Charles* Duke of *York*, after King *Charles*, under King *James*; and of *George* Duke of *Buckingham*, under King *James*, and King *Charles*: To which may be added, the Patent of *Algernon* Earl of *Northumberland*, under King *Charles* the First; and of *James* the moſt Illuſtrious Duke of *York*, under King *Charles* the Second.

De Dom. Maris lib. 2. cap. 17

Fourthly, That the Lord Admiral, and his Deputies proceeding according to his Commiſſion, is expreſly allowed by King *Philip* and Queen *Mary*; where they, by a Statute reſtraining the Exportation of Corn without Licence, make a ſpecial Proviſion, *That that Act ſhall not be prejudicial or hurtful to the Lord Great Admiral of* England *for the time being, or to the King and Queens Majeſties Juriſdiction of the Admiralty; but that the ſaid Lord Admiral or his Deputies ſhall exerciſe, uſe and execute all kinds of Juriſdiction belonging to the Sea, according to his or their Commiſſions.* Which Proviſion, although it ſeems to have been made in reſpect of that Statute, yet it ſhews what reſpect the King and Queen intended to their Lord High Admiral, their own Admiralty-Juriſdiction in all matters belonging to the Sea, and to the Commiſſion by them granted.

1. & 2. Phil. & Mar.

Againſt the Juriſdiction of the Admiral, as is granted by the King, and as it is exerciſed in the Court, it is pretended in general, That it is not agreeable, First, To ſeveral Acts of Parliament. Secondly, To divers Judgments, Book-Caſes, and Judicial Proceedings. To which may be added, the Reſolutions of the Judges upon the Complaint of the Admiral, in Sir *Edward Coke's Articuli Admiralitatis*. All which more eſpecially may be reduced to three Heads.

First,

Firſt, Where the Admiral meddles with Contracts and Writings concerning Sea-buſineſſes made within the Realm.

Secondly, Where he meddles with other things done within the Bodies of Counties; and

Thirdly, With ſuch things as are made or done beyond the Sea.

The Acts of Parliament are, Firſt, The Statute of the 13th. of *Rich.* 2. *chap.* 5. which reſtrains the Admiral from meddling with things within the Realm. Secondly, That of the 25th. of the ſame King, *chap.* 3. which declares, That he hath no Juriſdiction within Bodies of Counties. Thirdly, That of 2 *Hen.* 4. which inflicts Penalties on thoſe who ſue or proceed contrary to that of the 13th. of *R.* 2. Fourthly, That of the 5th. of *Elizabeth*, which is pretended to exclude the Admiral from meddling with things done within Ports and Rivers.

The firſt of theſe, being more general, may in this place be conſidered; the reſt being more particular may, in diſcuſſing of ſome other particular Points to which they are appliable, be examined.

That of 13 *Rich.* 2. *chap.* 5. ordains, that the Admirals and their Deputies ſhall not meddle of any thing done within the Realm, but only of things done upon the Sea, as it hath been uſed in the time of King *Edward* the Third.

Touching this Statute, it may be obſerved what Sir *Edward Coke* delivers out of *Plowden*'s Commentaries, *That the Preamble of a Statute is the Key to open the meaning of the Makers of the Act, and the Miſchiefs which they intended to remedy.* Now in the Preamble of the Statute it is ſuggeſted, that the Admiral had incroached divers Juriſdictions and Franchiſes belonging to the King and other Lords; from whence it may be conceived, that the Parliament intended only to reſtrain him from meddling in his Courts with ſuch things within the Realm, wherein he had incroached upon the Juriſdiction of the King and other Lords, which what thoſe things were, it doth no ways appear; but it cannot be imagined, or reaſonably conceived, that it was intended the Admiral ſhould be debarred from proceeding in Cauſes of Navigation and Negotiation by Sea, which never did belong to any other Courts of the King or other Lords, and were formerly held proper for the Conuſance of the Admiral; and, as things were then ſtated, could not be held Incroachments. *Juriſdiction of Courts, p.* 330.

So much may the rather be ſuppoſed, becauſe the Statute reſtraining him from meddling with things done within the Realm, but only with things done upon the Sea, further adds,, *According to what hath been duly uſed in the time of the noble Prince King* Edward, *Grandfather to the King*; which was King *Edward* the Third.

Sir *Henry Spelman* writes, that ſome Men did conceive *Cauſarum Nauticarum cognitionem, & forum rei maritimæ, quod hodie Curiam Admiralitatis vocant, ſub* Edwardo *Tertio illuxiſſe.* And it is probable, that in that King's time, who did many other glorious things for the Good of this Nation, the Court of Admiralty received ſome Settlement, and grew more conſpicuous than it was before. But the Conſtitutions obſerved by Mr. *Selden*, in the Book of the Admiralty of *Henry* the Firſt, *Richard* the Firſt, King *John*, and *Edward* the Firſt, do manifeſt, that the Court was much more ancient. And Sir *Edward Coke*, to ſhew the Antiquity of the Court of Admiralty to have been long before the time of *Edward* the Third; in whoſe days, he ſays, that ſome had dreamed that it had begun, recites the ancient Record *De ſuperioritate Maris*, before-mentioned. And likewiſe another quoted alſo by Mr. *Selden*, wherein it is ſhewed, that King *Edward* the Third, in the twelfth Year of his Reign, did conſult with all his Judges, *Ad finem quod retineatur & continuetur ad ſubditorum proſequutionem forma procedendi quondam Domini Regis, &c.* that is, *To the end that the Form of Proceedings at the Suit of the Subjects, begun and ordained by his Grandfather King* Edward *the Firſt, and his Council, for retaining and preſerving the ancient Soveraignty of the Sea of* England, *and the Right of the Office of the Admiralty in the ſame, might be reſumed and continued, touching the correcting, interpreting and declaring the Laws and Statutes lately ordained for the maintaining* *Gloſſ. v. Admiral.* *Juriſdiction of Courts, p.* 142. *Ibid.* 144. *Lib.* 2. *c.* 16.

maintaining of Peace and Juſtice amongſt the People of all Nations whatſoever, paſſing through the Engliſh *Seas, and for puniſhing of Offences, and for giving of Satisfaction to ſuch as were damnified; which Laws and Statutes were corrected, declared, interpreted and publiſhed by King* Richard *the Firſt, King of* England, *in his Return from the* Holy Land, *and were intituled Le Ley* Oleron *in the* French *Tongue.*

And it is manifeſt, that the Law was continued all that King's time, in regard that in the 49th. Year of his Reign, the ſelected Sea-men for the Inquiſition at *Quinborough*, in the Concluſion ſay, That touching ſome Buſineſſes propoſed in the Articles of the Inquiſition, they know no better Advice nor Remedy than that which had been formerly uſed and practiſed after the manner which is contained in the Law of *Oleron.*

All which being admitted, and duly conſidered, it may be preſumed, that ſuch Cauſes as did originally by Civil Law, belong to the Admiralty, and what former Kings had anciently ordained for the regulating of the ſame; as likewiſe, ſuch as were agreeable to the matters decided in the Judgments of *Oleron*, and what are contained in the Inquiſition taken at *Quinborough*, in the time of King *Edward* the Third, were within the Conuſance of the Admiralty-Court; and conſequently, the ſame are permitted to be tried and determined in the ſame Court, by the Statute of the 13th. of *Richard* the Second.

Touching the Judgments, Judicial Acts, and Book-Caſes, intended to reſtrain the Admiral of *England* in Exerciſe of his Juriſdiction, as it is granted in the King's Commiſſion, it may be anſwered in general; Firſt, That thoſe Judgments, Judicial Acts, *&c.* are in Cauſes of difference in reſpect of Juriſdiction betwixt the Courts of Common Law and the Admiralty-Court; and it is incident to all Profeſſions, where there is any Competition or Emulation with others, to incline to that which is moſt to their advantage. Secondly, Such Judgments and Book-Caſes have been grounded upon the common underſtanding of the Statutes, without any notice or reſpect to the Laws of the Sea, or the Condition of Maritime Cauſes, the Circumſtances of the Places being the chief Rule by which they have been framed. Thirdly, That many of them, upon due Examination, may be found not ſo concluding as they are pretended; and although much Reſpect and Reverence be due to the Authors, yet we are not bound to believe that their Judgments are infallible. Fourthly, That the Judicial Proceeding as Prohibitions, being the Reſults of the former Authorities, they may be weighed accordingly. Laſtly, Touching the main piece, Sir *Edward Coke's Articuli Admiralitatis*, carrying the Reputation of the Reſolutions of all the Judges touching the Matters therein contained, it will appear, that they very much differ from the Conceſſions of the Judges of the King's Bench, 1575. and from the Reſolution of all the Judges the 18th. of *February*, 1632. *ſubſcribed unto by them, in the preſence of King* Charles, *and twenty Lords of his Council.*

The particular Authorities which may be collected out of Sir *Edward Coke's* Notes, to prove that the Admiral of *England* hath no Conuſance of things done within the Realm, but only of things done upon the Sea, are as followeth.

1. That in the 2d. of *Richard* the Second, Hibernici *ſunt ſub Admirallo* Angliæ, *de facto ſuper alto Mari.*

2. that the 7th. of *Richard* the Second, in an Action of Treſpaſs brought for a Ship and Merchandiſes taken away, the Defendant pleaded, that he did take them, *En le haut Mer, ou les Normans que la enemis la Roy*; and it was allowed a good Plea.

3. That *Forteſcue*, who lived in the time of *Henry* the Sixth, ſaith, *Si quæ ſuper altum mare extra Corpus Comitatus in placito coram Admirallo deducantur per teſtes terminari debent.*

4. That *Dyer*, in the time of Queen *Mary*, ſaith, That by the Libel in the Admiralty-Court, the Caſe is ſuppoſed to commence *ſur le haut mer, & intra Juriſdictionem de l'Admiralty.*

To

To theſe Authorities may be anſwered in general; Firſt, That whereas ſome of them ſpeak of *Altum Mare*, the Statute of the 13th of *Richard* the Second hath no ſuch Attribute, but mentions ſimply the Sea.

2. That the ſame Authorities granting that the Admiral hath Juriſdiction on the Sea, do not declare, much leſs conclude, that he hath no Juriſdiction elſewhere: And, as to the Particulars;

1. The Authority of the 2d. of *Richard* the Second, which affirms, that the *Iriſh* were ſubject to the Admiral of *England* for a thing done on the Sea, mentions not for what kind of thing; and happily it might be for ſome Offence againſt the Crown, or againſt the Peace, in offering Violence to the King's Subjects, or the Subjects of his Allies: And in ſuch Caſes it might be underſtood, that he had Juriſdiction over the *Iriſh*, as over the Subjects of *England*, and other Nations, only extending to the high Sea. But it cannot from thence be argued, but that if it were a Buſineſs concerning Navigation, or Negotiation by Sea, he might alſo have had Juriſdiction over the *Iriſh*, as well as over other Perſons; not only *ſuper alto mari*, but alſo in other places elſewhere.

2. The Plea to the Action of Treſpaſs, in the 7th. of *Richard* the Second, might be good, and allowed in two reſpects; Firſt, In regard the thing was done where the Country could take no notice, and therefore no Jury by twelve Men could be had. Secondly, In regard the Ship and Goods were taken from the King's Enemies, againſt whom no Treſpaſs could be committed, becauſe that to offend them any ways was lawful; and in that reſpect the Plea might have been allowed, although the Ship and Merchandiſe had been taken in a Port, or Navigable River.

3. Whereas *Forteſcue* ſays, that things done upon the high Sea, proſecuted before the Admiral, ought to be determined according to the Proofs made by Witneſſes, and no more; Sir *Edward Coke* affirms, That it proves by expreſs words that the Admiralty is confined to the high Sea. *Forteſcue* having given reaſon for Tryals by Jury, when the Neighbourhood of the Country could take notice of the Buſineſs, grants, That for things done in other places, the Law of the Kingdom doth allow of Proofs by Witneſſes; as in Cauſes commenced before the Admiral for things done on the high Sea; and likewiſe before the Conſtable, for things done beyond the Sea. So that it is evident, he doth no more expreſly confine the Admiral's Juriſdiction to the high Sea, than he doth the Conſtable's to places beyond the Sea; it being notorious, that his Juriſdiction extends to Deeds of War, and Arms within the Land; as it will be proved, that the Admiral-Juriſdiction likewiſe to matters of Navigation, and Negotiation by Sea.

4. Touching the Authority of *Dyer*, that by Libel in the Admiralty-Court, the Caſe is ſurmiſed to commence, *Sur la haut mer*, &c. it may be anſwered, that the Libels in the Admiralty ſometimes (as the buſineſs falls out) declare, *Super alto mari & infra juriſdictionem Curiæ*; but ordinarily, Cauſes are laid only *Intra fluxum & refluxum Maris & Juriſdictionem Curiæ*; and generally the Cauſes are no otherwiſe deſcribed, but *A. contra B. in Cauſa Civili & Maritima.*

ASSERT. V.

That the Admiral of England *may hold Conusance of Contracts, and Writings made at Land, touching Business of Navigation and Trade at Sea.*

Notes upon Fortescue, *B.6. p.29. v.557.*

BY an ancient Record in the black Book of the Admiralty (of which Mr. *Selden* takes notice) it appears, that it was ordained by King *Edward* the First, and his Lords, at *Hastings*, *Que comment divers Seigneurs avoieno francheses*, &c. *That although divers Lords had divers Franchises to try Pleas in Ports, yet that neither their Stewards nor Bayliffs should hold any Plea, if it concerned Merchant or Mariner, as well for matter of Fact, as of Ships, Obligations, and other Deeds.* Which, although it extends only to inferiour Lords, yet it may be said, that it was done in favour of the Admiral's Jurisdiction in such Matters.

Secondly, By Commissions from time to time granted by the Kings of *England*, to the Admirals, power is given, *Ad cognoscendum, &c. to hold the Conusance of Charter-parties, Policies of Assurance, Bills of Bottomry, Bills of Lading, and of Sale of Ships.*

Thirdly, The Causes and Suits arising by occasion of Businesses contained in such Writings have in all observable times and places been held to be Maritime, and the Conusance of them hath been allowed to Maritime Courts, as it hath been before fully shewed. And it may be further considered, that such Contracts and Writings have their Original from ancient Maritime Laws; and are, both in Names and Nature, things foreign to the Laws of this Realm. And so much may be gathered from the Order which *West* observeth in his Book of Presidents; where, after the Forms of Deeds and Contracts proper to the Common Law, he handles those which concern Merchandizing and Trade by Sea, as things of a distinct and several nature.

Touching the Particulars; First, Charter-parties seem to have been derived from the *Rhodian* Laws; by which it was provided, *Si quis navem conduxerit, instrumenta consignata sunto*; *If any Man shall hire a Ship, let there be Writings drawn and sealed thereupon.*

There is likewise mention of Charter-parties in the Roll of *Oleron*, and in the *French* later Ordinances, made for the Reglement of the Admiralty of *France*; and it is supposed, that no mention of them can be found in any Law or Statute of this Realm, until the 32d. of King *Henry* the Eighth, *cap.* 14. where the Conusance of them is referred to the Admiralty, as it shall be hereafter shewed. More-

Lex Mercat. p.1. cap.21. over, *Malines* confirms, that anciently in Charter-parties it was expressed, *That the Contents thereof should be understood according to the Law of* Oleron; and at this time there are Clauses usually inserted into them, enjoyning, That the Merchants, besides the Payment of Freight, shall make Allowance for *Primage*, *Average* and *Pettelodmenage*; things no where occurring in the Books of Common Law, and anciently determinable by the Law of *Oleron*.

Secondly, Policies of Assurance are grounded upon the Civil Law; which alloweth an Action for the undertaking a Hazard which is doubtful, for Reward or Consideration first given, which is commonly called a *Præmio*; they are, of later

P.1. cap.14. Civilians, called *Sponsiones Mercatoriæ*, and *Assecurationes*; which *Malines* affirms, were taken up in this Kingdom from the Laws of *Oleron*, practised on the Sea-Coasts of *France*; but it is manifest, that now they are likewise in use in *Venice*, *Naples*,

Naples, *Genoua*, *Ancona*, *Spain* and *Portugal*, and in other places where the Affairs of the Sea are regulated by the *Civil*, *the Conſolato*, *and Laws of* Oleron.

Thirdly, Bills of Bottomry, when an Owner, or Maſter of a Ship, to furniſh his Voyage, takes up Money upon extraordinary Intereſt, to be paid when the Ship arrives at the Port appointed, and thereby engages his Ship for the performance of the ſame, are grounded on the ancient *Grecian* and *Roman* Laws. *Julius Pollux*, a learned Expoſitor of Terms, or Words uſed amongſt the *Grecians*, calls a Bill of this kind, ναυλικὸν συγγραφὴ, *quæ de nautico fœnore conſcripta eſt*; of which *nauticum fœnus*, there are ſeveral Titles in the Digeſt and Code of the Civil Law, and the Moneys ſo lent to be tranſported at the hazard of the Lender, in the Civil Law, is called *Pecunia trajectitia*; of which *Salmatius*, *Pecunia trajectitia dicitur, quæ trans mare vehenda accipitur, & uſuræ quæ ex pacto in eam pecuniam præſtantur, Maritimæ, & nauticæ dicuntur.* *D. lib. tit. 2. C. lib. 4. t. 33.* *D. Uſuris, c. 2.*

Fourthly, Bills of Sale of Ships are made conformable to Maritine Laws; for, as *Weſt*, in his Preſidents, delivers the Form, it is in ſuch Bills of Sale expreſſed and declared, That he that ſells the Ship, binds himſelf, his Executors and Adminiſtrators, the ſaid Ship ſo bargained and ſold, to warrant and defend, againſt all Men, for one whole Year and a Day, *according to the Law of* Oleron, the danger of the Sea, Fire and Enemies only excepted.

Theſe things being conſidered, it may be thought reaſonable, that ſuch Contracts and Writings being grounded upon the Civil Law, the Laws amongſt Merchants, and other Maritime Laws, the Sutes ariſing about the ſame, ſhould rather be determined in thoſe Courts, where the Proceedings and Judgments are according to thoſe Laws, than in other Courts which take no notice thereof.

For the reſtraining of the Court of Admiralty from proceeding in Sutes ariſing from ſuch Contracts and Writings made at Land, although the Buſineſſes therein contained are to be performed at Sea, amongſt the Authorities cited by Sir *Edward Coke*, there may be intended, appliable to this purpoſe, Firſt, The Act of Parliament of the 15th. of *Richard* the Second, *chap.* 15. Secondly, Some Judgments given, and Prohibitions granted in the Courts of Common Law, concerning Cauſes of this ſort, commenced in the Admiralty.

Touching the Statute of the 15th of *Richard* the Second, *chap.* 34. which is the Ground of the main Objections againſt the Admiral's Juriſdiction, it may be conceived, That whereas that of the 13th. Chapter only in general reſtrains the Admirals from meddling with things done within the Realm, and allows them to meddle with things done on the Sea, that is relating to the Sea, this Statute was intended to declare more expreſly, both in what places, and in what matters they ſhould not meddle: And touching the places, in regard *the word Realm, as Sir* Edward Coke *obſerves, in a general ſenſe, extends to the Sea within the King's Dominions, as well as to the Land*, declares the Reſtraint to be only *within the Bodies of Counties*: And it may be ſuppoſed, that he intended a difference betwixt the Bodies, and the Extremities or Bounds of Counties; as the Statute of the 3d. of *Edward* the Firſt makes a difference betwixt *things done within the Shires, and things done within the Marches, and Borders of Shires.* Whence the Statute of the 5th. of *Elizabeth*, *chap.* 5. allows to the Admiral's Juriſdiction, as the main Sea, ſo alſo the Coaſts of the Sea, being no parts of the Bodies of any Counties of the Realm; and in that reſpect, this Statute ſpecially excepts from the Admiral's Juriſdiction, the Conuſance of Wreck of Sea, as happening on the Coaſts or Shoars of the Sea, out of the Bodies of any Counties. So that, as to the place, or Territory of the Reſtraint, this Statute declares it ſtraiter than that of the 13th. of *Richard* the Second. *Comment in Littleton, Sect.* 43.

Touching the matters with which the Admiral, by this Statute, is not to meddle within the Bodies of Counties, they are expreſly declared; Firſt, *Contracts, Pleas and Quereles*; that is, Perſonal Actions concerning Contracts. And Secondly, are implied Matters Criminal, and the Proſecution of them.

Touching the Firſt, which concern this Aſſertion, the words are, *That the Court of Admiralty hath no manner of Conuſance of any Contract, Plea, or Quarrel, riſing within the bodies of any Counties; but all ſuch Contracts, Pleas, and Quarrels ſhall be tried, determined, and remedied by the Common Law.* Which words are ſo general, that it is pretended, they ought to be underſtood of all Contracts and Writings whatſoever, even of ſuch as concern Sea buſineſſes, if they be made, or written within the Bodies of any Countries.

Juriſdiction of Courts, p. 330.

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concern Merchandize, or matters belonging to the Staple, it was not thought conſiderable, to point of Juriſdiction, whether the Contract or Covenant were made within or without the precincts of the Staple.

The ſubſequent Statutes are that of the 32 of *Hen.* 8. *chap.* 14. which declares that the Court of Admiralty may hold plea of Charter-parties; and that of the 43 of *Elizabeth*, *Chap.* 12. which hinders the Courts of Common Law from medling with Policies of Aſſurance, which two things are the main matters endeavoured to be maintained by the Statute of the 15 of *Rich.* the 2. to belong to the Conuſance of the Courts of Common Law, becauſe they are uſually made at Land, within the bodies of Counties.

The Statute of the 32 of *Hen.* 8. *Chap.* 14. prohibiting the employment of Foreign Ships, ordained, concerning the Shipping of this Kingdom, *That the Owners, or Maſters make their departure from the Port of* London, *after the Freighting, or Lading of the Ship, as ſoon as wind and weather will ſerve, according to the Charter-party made betwixt the Owner, or Maſter, and the Merchants, without protracting of time, and alſo that they, and every of them to his power, ſhall ſee and provide that all Wares and Merchandiſes, which ſhall be by the ſaid Merchants, and their Servants brought into any Ship or Veſſel, ſhall be honeſtly and in good order ſaved and kept; Provided always, that if any Merchant-ſtranger, or other, find himſelf grieved, or damnified, by negligent keeping of his Wares, or Merchandiſes, or by long delaying, or protracting of time, in making of the Voyage, by the ſaid Owner, his Maſter, or any of the Mariners of the ſaid Ship, otherwiſe than ſhall be agreed in, or by the ſaid Charter-party, not having been letten by wind or weather, he ſhall and may have his remedy by way of complaint, before the Lord Admiral of* England *for the time being, his Lieutenant, or Deputy, againſt the ſaid Owners or Maſters, who ſhall or may ſummarily, and without delay take ſuch order therein, as ſhall be thought to their diſcretions moſt convenient; and according to right and juſtice in that behalf.* It is true, that the Caſes expreſt, are for the Merchants to recover Satisfaction for delay, or damage done to their Goods, according to the Charter-party from the Owners, and Maſters of Ships; and it were very unreaſonable, if the Maſter or Owner having duely performed their Voyage, might not ſeek the like remedy before the ſame Judge againſt the Merchants, not obſerving the Charter-party, either in not Lading their Goods within the time appointed, or not paying the Freight according to agreement in the ſame contained and expreſt, the cauſes being *hinc inde* reciprocal, and it being ſometimes held an abſurdity, *Illud quod in uno eodemque judicio terminari poteſt, apud diverſos Judices ventilari.*

The Statute of the 43 of *Elizabeth*, *Chap.* 12. declares, *That whereas differences growing upon Policies of Aſſurance had been ordered by diſcreet Merchants, approved by the Lord Mayor, who did ſpeedily decide thoſe Cauſes, until that of late years, divers perſons did withdraw themſelves from that arbitrary courſe, and have ſought to draw the parties aſſured, to ſeek their monies of every ſeveral aſſurers by Sutes commenced in her Majeſties Courts, to their great charges, and delay, thereupon it was enacted, that a Commiſſion ſhould be granted, giving power to certain Commiſſioners* (the firſt whereof is the Judge of the Admiralty) *to order and decree ſuch Cauſes, in a brief and ſummary courſe, without formalities of pleadings and proceedings.* *Malines* affirms, that he amongſt others, was one who upon experience of the great inconveniences which followed upon the drawing of thoſe Cauſes, to the Courts of Common Law, ſolicited the Parliament to paſs that Act.

P. 1. c. 24.

The Legal authorities which may be conceived to be intended to debar the Admiral from the Conuſance of Contracts, and Writings made at Land, touching things to be performed at Sea, or ſuch as ſhew that ſince the making of the Statute of the 15 of *Rich.* 2. *Chap.* 3. and not before, the Courts of Common Law have admitted, and held Pleas of Charter-parties, of Policies of Aſſurance, and declared ſomething concerning Mariners wages. Touching Charter-parties, it is ſhewed firſt, that in the 31 of *Hen.* 6. an Action was brought upon the Statute, of double damages, by *William Hore* againſt *Jeffery Unton*, who had ſued the ſaid *Hore* in the

the Admiralty for Fourſcore pounds upon a Charter-party of Freightment of a Ship of the ſaid *Jeffryes*, imployed to go towards *Iſland*, in regard, *Contractus ille apud novam Sarum infra Corpus Comitatus, & non ſuper altum mare factus, & junctus fuit*; whereupon damages were aſſeſſed againſt the Defendant to an hundred Marks, and coſts to 40 l.

Again, that in the 28 of *Elizabeth*, in the Kings-Bench, upon a Charter-party, by a Deed indented which was made at *Thetford*, in the County of *Norfolk*, *Evangeliſt Conſtantine* ſued *Hugh Glynn*, for the breach of Covenant, in not ſtaying at *Muttrel* in *Spain*, ſo many days as were limited by the Covenant, whereupon he was condemned in 500 l. and in arreſt of Judgment it being ſhewed, That the iſſue did ariſe out of a place in a Foreign Kingdom from whence no Jury by twelve Men might be had, and that therefore the Tryal was not ſufficient, Sir *Chriſtopher Wray*, and the whole Bench reſolved, that the Plaintiff ſhould recover 500 l. beſides the coſts and damages, becauſe the Charter-party was made at *Thetford* within the Realm.

Concerning Policies of Aſſurance, That in the 38 of *Hen.* 8. in a Caſe betwixt *Crane* and *Bell*, touching a promiſe made at *Dartmouth*, That the Ship ſhould paſs without taking, which was afterwards ſurprized by the *Spaniard* upon the high Sea, it was held not determinable in the Admiralty, for although the taking were upon the Sea, yet the promiſe was upon the Land.

Again, that in the 36 of *Elizabeth*, an Action of the Caſe was brought in the Kings-Bench upon an Aſſumpſit, from a Policy of Aſſurance, where it was undertaken, That a Ship ſhould ſail ſafely from *Melcomb Regis* to *Abbevil* in *France*, the Ship being Arreſted by the *French* King in the River of *Somme*, in the Realm of *France*, and the matter was there adjudged: To which may be added what Sir *Edw. Coke* delivers for Law in *Dowdales* Caſe, *Cum combien le contract comme le performance*, &c. when *as well the Contract as the performance of it, is wholly done beyond the Sea, and it ſo appears, the Tryal fails at the Common Law:* But here, ſaith he, the Aſſumpſit was made at *London*, which is the ground and foundation of the Action, and therefore the Tryal of neceſſity ſhall be there, or otherwiſe it ſhall not be tryed at all; and the Arreſt which is the Iſſue, is not the ground of the Action, but the Aſſumpſit, &c.

Touching Mariners wages is, that of the Book of 48 of *Edw.* 3. where it is ſaid, That if a Mariner make a Covenant with one to ſerve in a Ship on the Sea, yet if his wages be not paid they ſhall be demanded in that Court, by the Common Law, *Nemy per ley Mariner.*

To theſe Authorities it may be replyed, in general, but the laſt, are grounded upon the commonly received ſenſe of the Statute of the 15. *Rich.* 2. that the Contract doth riſe only there, where it is made or written, without any reſpect to the nature of the buſineſs, and the occaſion thereof, from whence in truth it doth more properly ariſe; And whereas other Acts of Parliament have in ſome ſpecial points ordained and declared otherwiſe, it may be hoped that it may not be held a Crime unexcuſable, if a Man ſhould doubt of the reaſonableneſs of thoſe Authorities.

Touching the Particulars, As Firſt of the 31. of *Henry* 6. betwixt *Hore* and *Unton*, wherein double Damages were given for ſuing in the Admiralty Court upon a Charter-party, it is ſaid, that the Sute was upon a Charter-party of Freightment, Fourſcore pounds, It doth not appear it was for the freight of the Ship, although it be moſt probable; and if it were ſo, why the Maſter of the Ship ſhould not as well ſue for his Freight, by virtue of the Statute of the 32. of *Hen.* 8. as the Merchant by virtue of the ſame Statute, might ſue in the Admiralty for damage done to his Goods aboard a Ship, contrary to the Charter-party, without any reſpect to the place where it was made? if no reaſon can be ſhewed, that Judgment may be thought not to have been grounded ſo much upon Reaſon as it was upon the common received Opinion of the meaning of that Statute, as it is therein related, *quia contractus ille apud novam Sarum, factus & junctus fuit.* Touching that of the 28. of *Elizabeth*, whereby

whereby *Glynn* was condemned to *Conſtantine* for breach of Covenant, in a Charter-party, in the ſum of 500 l. it ſeems a Caſe far more reaſonable, though ſomething grievous, becauſe it is not denied, but that a Sute upon a Charter-party may be commenced at the Common Law, upon a penalty, as it ſeems that was for breach of Covenant, in not ſtaying at *Madrill*, ſo many days as were limitted by the Charter-party, Only that is thought no concluding argument, againſt a Sute in the Admiralty for Freight grounded on a Charter-party; But whereas when in the Arreſt of Judgment, it was alledged that the Tryal was not ſufficient, becauſe the the Iſſue did ariſe out of a place in a Foreign Kingdom, from whence no Jury, by Twelve Men might be had, Sir *Edward Coke* ſays, that Sir *Chriſtopher Wray* and the whole Bench reſolved, That the Plaintiff ſhould recover coſt and damages, becauſe the Charter-party was made at *Thetford* in *Norfolk*, within the Realm, it is as much as if Sir *Edward Coke* had ſaid, that whether the ſuggeſtion in the Iſſue, were true or falſe, tryed by a competent, or incompetent Jury; yet if the Sute were brought upon a Charter-party, the Conuſance thereof did belong to the Common Law, and whether the former Judges, had proceeded well or not, was not material; ſo that what is premiſed formerly touching Judgments and judicial Acts, in the firſt Chap. may from this Caſe be excuſed.

And as touching the infinite Prohibitions granted upon Sutes commenced in the Admiralty concerning Charter-parties, there may be ſomething declared and made appear reaſonable hereafter, in another place.

As to the inſtances of Policies of Aſſurance held tryable at the Common Law, although by the Statute of the 43. of *Elizabeth*, it hath been ſhewed, that the Proceedings in thoſe Cauſes at the Common Law, were altogether inconvenient to the Kingdom; yet in regard Sir *Edward Coke*'s Reaſons in *Dowdales* Caſe for the maintaining of Proceedings in ſuch buſineſſes, may be applyed to other matters, to the prejudice of the Admiralty-Juriſdiction, ſomething may be obſerved concerning the ſame, in Sir *Edward Coke*'s Reaſons; As firſt, That the Aſſumpſit is the ground and foundation of the Action; and that the Arreſt, or Imbargo in that Caſe had been no ground of an Action, if there had been no Aſſumpſit, neither could the Aſſumpſit have produc'd an Action, if there had not been an Arreſt. But what was the neareſt and immediate ground of the Action? without doubt, the Arreſt, and what was chiefly in queſtion? not the Aſſumpſit, for it was taken for granted, that that was done in *London*; but it was the Arreſt, which (as it was declared) was in Iſſue; And it is likely that the Common Law which intended a Tryal of the Vicinage, intended it of the thing or matter which was in Iſſue, to be tryed. But he further argues, That the Tryal muſt be of neceſſity where the Aſſumpſit is made, for otherwiſe there could have been no Tryal at the Common Law, which might have ſavour'd of ſome reaſon, If poſſibly there could have been no Tryal in any other Court; but the Cauſe being Maritime, and amongſt Merchants, it might more properly have been tryed in the Admiralty or in the Aſſurance-Court, without a Jury or Tryal of Twelve Men, by Witneſſes, as *Forteſcue* acknowledeth.

Thirdly, touching that of the Book of 48. of *Edward* the 3. where it is ſaid, That if a Mariner make Covenant only to ſerve in a Ship on the Sea, yet if the wages be not paid, they ſhall be demanded in that Court by Common Law, not by the Law Mariner, the occaſion was, that an Action of Debt being brought at the Common Law, upon an Obligation dated at *Harflet* in *Kent*, whereas in truth it was made in *Normandy*, and the conſideration was Service done in War in *France*, thereupon one of the Judges ſaid, That the ſum demanded growing due for Service done in War, the Cauſe ought to be tryed in the Conſtable and Marſhals-Court; Another (as it ſeems willing to retain the Cauſe) ſaid that he hired a Man to go in a meſſage to *Rome*, although the Service were done in another Realm, yet what was due by covenant, might be recovered in that Court; Another ſaid, if a Mariner make a Covenant with one to ſerve in a Ship on the Sea, yet if his wages be not paid, they ſhall be demanded by the Common Law, &c. So that it is plain it was not

not a Reſolution of the Court, but a *fuit dic*, as they ſay, and one Man's opinion by way of argument to another purpoſe; And the ground thereof might be, that if it were in Iſſue whether ſuch a Covenant were made, it might be tryed at the Common Law, but it doth not conclude but that if the Queſtion were, whether the ſervice in the Ship were performed on the Sea, it might more properly be tryed in the Admiralty Court.

For confirmation on this point.

Firſt, To the 4th Requeſt of the Judge of the Admiralty to the Lord Chief Juſtice of the Kings-Bench, *May*, 12. 1575. *viz.* That the Judge of the Admiralty may have and enjoy the knowledge of the breach Charter-parties made between Maſters of Ships and Merchants for Voyages to be made to the parts beyond the Sea, according as it hath been accuſtomed time out of mind, and according to the good meaning of the Statute of 32. *Hen.* 8. *chap.* 14. though the ſame Charter-parties be made within the Realm; The Anſwer is, *This is agreed upon for things to be performed upon, or beyond the Seas, though the Charter-party be made upon the Land, by the Statute of* 32 *Hen.* 8. *chap.* 14.

Secondly, it was agreed unto by all the Judges and Attorney-General before the King and his Counſel, *That if a Sute be before the Admiral, for Freight or Mariners wages, or for breach of Charter-parties for Voyages to be made beyond the Sea, although the Charter-parties happen to be made within the Realm, and although the money be payable within the Realm, ſo as the penalty be not demanded, a Prohibition is not to be granted.* But if the Sute be for the penalty, or if the Queſtion be made whether the Charter-party were made or not, or whether the party did releaſe, it is to be tryed by the King's Court at *Weſtminſter*; So that at firſt it be denied upon Oath that a Charter-party was made, or a denial upon Oath tendred, to which it may be added, that it was there further agreed, *That if Sute ſhall be made in the Court of Admiralty, for building, amending, ſaving, or neceſſary victualling of a Ship, againſt the Ship it ſelf, and not againſt any party by Name, but ſuch as for his intereſt makes himſelf a party, no Prohibition is to be granted, though this be done within the Realm.*

ASSERT. VI.

That the Admiral of England *may hold Conuſance of things done in Ports, and Navigable Rivers, as touching Damages done to Perſons, Ships, and Goods, Annoyances of the Publick-paſſage, and unlawful Fiſhing.*

l. 39. *D. de verb. ſignif.*

FIrſt, it is apparent that Ports, and Navigable Rivers, are places where Maritime buſineſſes and cauſes of Differenee concerning the ſame, may happen, as well as on the main Sea it ſelf, and in truth are more proper for ſuch affairs, than for any ordinary buſineſſes of the Land, *Portus* (ſaith *Ulpian*) *eſt locus concluſus quo importantur merces & exportantur*, and importation and exportation of Goods, do chiefly concern Navigation, and Merchants affairs.

De Dominio Maris lib. 2. *cap.* 18.

Secondly, *Flumina navigabilia*, that is Navigable Rivers, are of the ſame condition and uſe, and it is allowed by the Common Law, *that every Water which flows and reflows, is an Arm of the Sea*; and Mr. *Selden* maintains that Navigable Rivers are in the King's ſpecial Dominion and Protection, and under the King, within the Juriſdiction of the Admiral: For he ſhewing the difference betwixt the Admiral of *France*, and the Admiral of *England*, ſaith, *the Government of Rivers, which are in the Dominion of the King of* France, *belongs not to the Admiral of* France, *but to the ſpecial Juriſdiction of thoſe who are called the Preſidents or Maſters of the Waters, and Foreſts: For the Publick Rivers, as he affirms, within the limits of that Kingdom, belong wholly to another Office, and not to that of the Admiral, as it doth to the Admiral of* England.

Thirdly, it is evident by the Judgments of *Oleron*, eſtabliſhed for Law in the Admiralty of *England*, That many cauſes are reſolved concerning Damages done by one Ship to another, ſailing in the River, and for falling foul one upon another in the Port or Habour, as alſo for loſs done to Merchants Goods in the Ports of diſcharge by miſcarriage in the unloading, by reaſon of unfit coardage and tackling. It may likewiſe be ſhewed out of the Inquiſition taken at *Quinborough*, that many things done in Ports and Navigable Rivers, are within the Juriſdiction of the Admiralty, as Ship-wrights taking exceſſive wages, removing of Anchors, cutting of Buoy-ropes, and taking Salmon at unſeaſonable times, the uſing of unlawful Nets, the ſpoyling of Beds of Oyſters, the dregging for Oyſters and Muſſels at unſeaſonable times, and divers other matters. Againſt the Admirals Juriſdiction in this reſpect are pretended likewiſe Statutes, Book-caſes, Judicial Acts, &c. by which it is endeavoured to be proved, That the Admirals Juriſdiction is confined only to the high Sea, and wholly excluded from things done in Ports and Navigable Rivers, which are ſaid to be within the bodies of the Counties of the Realm. The firſt Statute is that of 15. *Richard* 2. which declares, that the Court of Admiralty hath no manner of Conuſance, Power, or Juriſdiction of any Contract, &c. or any other thing riſing within the Bodies of Counties, either by Land or by Water; which latter part is ſo General, and uncertain, that according to the general rule delivered by Sir *Edward Coke*, before-mentioned, *lex generaliter loquens reſtringenda eſt*, &c. for by the general underſtanding of it, as it is moſt generally underſtood by the Profeſſors of the Common Law, it doth not only debar the Admiral from the Conuſance of thoſe cauſes, which he is ſuppoſed to have encroached to the prejudice of the Courts of Common Law, but alſo from the conuſance of thoſe things, which they

they were wont, or ought to have of right, contrary to expreſs meaning of the Preamble of that Statute, as all thoſe Cauſes which before this Statute did belong to the Admiral by the Roll of *Oleron*, and the Inquiſition at *Quinborough*.

But it may reaſonably and probably be conceived, that the Statute intending to reſtrain the Admirals Juriſdiction, intended by the words, *Other things in general*, ſuch things, about which Actions and Sutes at the Common Law might ariſe, And having before mentioned Contracts, Pleas, and Quarrels, wherein private perſons might have an intereſt by way of perſonal Actions, did afterwards add *other things ariſing within the Bodies of Counties*, intending thereby publick offences, and ſuch as are againſt the Crown, as Treaſon, Murther, Manſlaughter, Mayhemes, Robbery, Treſpaſſes, *vi & armies*, and the like, which interpretation, Firſt is agreeable to the Preamble, which mentions encroachments upon the Juriſdiction, &c. pertaining to the King. Secondly, becauſe the Statute ordaining that ſuch things ſhall be tryed, diſcuſſed, and determined by the Laws of the Land, and not before the Admiral; ſeems to intend things, which might be tried either way, as Offences of that Nature, which done on the Sea, might have been tried before the Admiral, and being done on the Land were to be tried in the Courts of Common Law. Thirdly, becauſe the reſervation in the concluſion of the Statute Provides, that nevertheleſs of the Death of man, or Mayheme done in great Ships, being, and hovering in the main ſtream beneath the Bridges next to the Sea, the Admiral ſhall have Conuſance, which being in the nature of an Exception, implies, that the things before mentioned in general, were to be underſtood of Offences, or matters of the ſame nature, and condition.

Sir *Edward Coke* where he cites the Statute of 15. *Rich.* 2. notes, that it was to be obſerved, how curious the makers of it were, to exclude the Admiral from all manner of Juriſdiction, within any Water which lyeth within any County of the Realm; but if his words be conſidered, his curioſity goes far beyond them, for whereas the words of the Statute Anciently and generally have been received, only beneath the Bridges next or nigh the Sea, he renders it only beneath *the Points of the ſame Rivers*, The French word *Pounts*, being eaſily turned into *Points*, which Criticiſm might have the better paſſed, if it might be known what were meant by *Points of Rivers*; we underſtand by *Points of Land*, ſome extreme parts or ends, which in reſpect of the reſt, are of a more accute figure, but Rivers towards the Sea, (which way the Criticiſm looks) grow broader, or wider, far from any Angular acuteneſs; Again, we commonly ſay above, or beneath the Bridge; but if we ſpeak of the extremites, we ſay behither or beyond, within or without the Lands end; beſides, whereas the words in that place are Ships riding in the main Stream of Navigable Rivers, it may be doubted where that main Stream can be found beneath the points of the River.

The former reading of the Statute, *viz. beneath the Bridges*, is agreeable to an ancient Edition of the Statutes at large Printed 1543. above a hundred years ſince; ſo *Raſtals* Abridgment, and *Poultons* Collection of the Statutes, and is ſo received by *Crompton* in his Juriſdi[illegible]ion of Courts, where he writes of the Admiralty, according to the Statutes. It is further confirmed by a Manuſcript Copy of the Statutes in *French*, in the Library of *Merton* College in *Oxford*, in which are theſe words, *Nime meyns de mort de omme, & de mayheme, engroſſes neifs, eſtants & overantes, a my le haut ſio des gr[illegible]es reviers tant ſeculament, par-avali des pounts, des meſmes les riviers, & L'n Admiral conuſance.*

The ſecond Statute that may be applied to this purpoſe is that of 5 *Elizabeth*, *Chap.* 5. which relating to divers things made offences by that Statute, ordains, *that all and every of the ſaid offences done on the main Sea, or Coaſts of the Sea, being no part of the bodies of any Counties of the Realm, and without the Precinct, Liberty and Juridiction of the Cinque Ports, and out of any Haven or Pier, ſhall be determined by the Lord Admiral.*

Touching this Statute it may be obſerved, That the end thereof was according to

the Title, for the maintenance of the Navy, and as for a mean to that end, for the imploying of *Engliſh* Shipping, eſpecially for the bringing in of Fiſh, for which purpoſe it provides, That Wedneſdays ſhould be held Fiſh Days; That none ſhall demand toll of Fiſh brought in Subjects Ships; That no Herring unſalted ſhould be bought out of ſtrangers bottoms; beſides, that no Wares ſhould be carryed from Port to Port; and that no Wine, nor Woad ſhall be brought in but in *Engliſh* Ships, of which buſineſſes it might be more fit for the Officers of Corporate Sea-Towns to enquire, than for the Admiral, which the Parliament underſtanding, might without prejudice to his Juriſdiction in other matters except from him touching offences of that kind, the enquiry within Havens and Piers.

Beſides, whereas Sir *Edward Coke* recites the words, *That all ſuch Offences ſhall be tryed before the Admiral*; the words of the Statute are, *before the Lord Admiral of* England, *or his Lieutenant or Deputy or Deputies, and other Juſtices of Oyer and Terminer, according to the Statute of the* 28 Hen. 8. *for Cauſes of Piracy.* So that it concerns not the Admiral in his ordinary capacity, but as he is chief in that Commiſſion. And whereas Sir *Edw. Coke* from this concludes, That by the Judgment of the whole Parliament, the Juriſdiction of the Admiral is wholly confined to the Sea, and Coaſts of the Sea, being no parcel of the County, how ſtrongly ſoever he conceives it, under favour it is no good Argument, to inter from theſe new created offences, of which he is to enquire in an extraordinary way, that he hath no Juriſdiction in other matters, which did formerly belong unto him, eſpecially touching Navigable Rivers, of which in this Statute there is no mention, nor exception.

Moreover, whereas the Judgment of the Parliament in this Statute is ſo confidently urged for the limiting of the Admirals Juriſdiction, it is deſired, that to the points in queſtion, two other Statutes, the one long ſubſequent to that of *Rich.* 2. the other not long preceding that of the 5. of Queen *Elizabeth*, may be taken into conſideration.

The firſt is that of 28 *Hen.* 8. *Chap.* 15. concerning the Tryal of Piracies, and other crimes committed within the Admirals Juriſdiction, wherein it is declared, *That all Treaſons, Felonies, Murthers, Robberies, Confederacies committed in or upon the Sea, or in any other Haven, Creek or place, where the Admiral, or Admirals have, or pretend to have Juriſdiction, ſhall be enquired, tried, heard, or adjudged by the Admiral, and others appointed by the Kings Commiſſion under the Great Seal, in ſuch Shiers and places of the Realm as ſhall be limited in the Commiſſion, as if any ſuch offence had been committed upon the Land*, &c.

The end of this Statute was, that whereas Piracies, and other offences committed within the Juriſdiction of the Admiralty, were formerly tryed according to the Civil Law, and Offenders could be Convicted onely by Confeſſion of the parties, and proofs by Witneſſes, to reduce the Trial of the ſame to the courſe of the Common Law by a Jury of Twelve men; by which Statute, although the Manner of the Tryal of Offences were altered, yet the Limits of the Admirals Juriſdiction are allowed to extend not onely to the Sea, but to Havens, Creeks and places, where the Admiral, or Admirals have, or pretend to have Juriſdiction. And in the Commiſſion of Oyer and Terminer grounded on that Statute, the places of Offences committed, to be heard and determined before the Admiral, and others, are thus deſcribed, *Tam in aut ſuper mari, aut aliquo portu, rivo, Aqua dulci, Creca, ſeu loco quocunque infra fluxum maris ad plenitudinem, a quibuſcunque primis pontibus verſus mare, quam ſuper littus maris, & alibi ubicunque infra juriſdictionem noſtram Maritimam, aut limites Admiralitatis Regni, noſtri, & Dominiorum noſtrorum:* By which words, not onely power is given to hear and determine Offences in thoſe places; but it is likewiſe declared that thoſe places do belong to His Majeſties Maritime Juriſdiction, and of his Admiralty.

The ſecond Statute is that of the firſt of *Elizabeth*, *Chap.* 17. made for the preſervation of Spawn and fry of Fiſh, and the remedies thereof, being provided, it is ordained, *That the Lord Admiral of* England, *and the Lord Mayor of* London *for the*

the time being, and all and every other, which lawfully have, or ought to have any conſervation, or preſervation of any Rivers, Streams or Waters, ſhall have power to enquire according to that Act, which plainly ſhews, that the Parliament then conceived, that the Admiral of *England* had power and Juriſdiction to ſome purpoſes in Rivers and Streams, ſalt and freſh, otherwiſe, he had not been named in the firſt place, amongſt thoſe who had right of converſation of the ſame.

The Juriſdiction of the Admiralty as to publick offences and cauſes criminal ſince the Statute of 15 *Rich.* 2. hath been ſo well ſettled by the Statute of 28 *Hen.* 8. that there can be little occaſion of difference touching thoſe matters betwixt the Courts of the Common Law, and the Court of Admiralty; yet Sir *Edward Coke* having unneceſſarily collected many other legal Authorities which may be applied to maintain that by the Common Law the Admirals Juriſdiction did not extend to Ports and Navigable Rivers, it may not be amiſs to examine the grounds and weight of the chiefeſt of them, which may be reduced to two heads; Firſt, ſuch as ſhew that Havens and Navigable Rivers are within the bodies of Counties, and that the Common Law hath held plea of things done in them. Secondly, That the Courts of common Law have puniſhed ſuch as have ſued in the Admiralty Court, for things done in Ports and Navigable Rivers.

Touching the firſt, theſe Authorities might be intended.

Firſt, That in the time of *Edw.* the firſt, a Replevin was brought for the taking of a Ship on the Coaſts of *Scarborough* in the Sea, and carrying her into the County of *N.* The Defendant although he pleaded that the thing was done on the Sea, was over-ruled to anſwer, from whence amongſt other things Sir *Edw. Coke* makes a ſpecial Obſervation, That when the taking of a thing is partly on the Sea, and partly on the Land, the Common Law ſhall have the Juriſdiction.

Secondly, That in the time of *Edw.* 2. It was held, That where one may ſee what is done on one part of the Water, and on the other, it was held no part of the Sea, and that the Coroner ſhall exerciſe his Office in this caſe, and of this the Country may have knowledge.

Thirdly, That in the 43 of *Edw.* the Third, ſixty Acres of Marſh ground over which the Sea did flow and reflow, were adjudged parcel of the Mannor of *Brancaſter*, belonging to the Abbot of *Ramſey*, and by conſequence were within the body of the County to the low Water mark.

Fourthly, That in the 46 of *Edw.* 3. an Action of Treſpaſs being brought in the Kings Court againſt certain Perſons of *Hull*, for taking a Ship in the Haven of the Town, the Mayor and Bailiffs demanded Conuſance by Charter of the King, by which it is granted, that the Citizens and Burgeſſes of *Hull*, ſhould not be impleaded, *Alibi de tranſgreſſionibus infra Burgum, quam infro Burgum*, which was allowed, and the Haven lying within the Burrough, by conſequence was within the County.

How far theſe Authorities conduce to the proof of the head propoſed, may be doubted, but as to the ground of the head it ſelf, which is ſo much inſiſted on, That where the Courts of Common Law have Conuſance, the Court of Admiralty can have no Juriſdiction, under favour it is ſufficient, for in the ſame place ſeveral Courts to ſeveral purpoſes may have diſtinct Juriſdictions, Robberies and divers other Offences committed in Forreſts, are Proſecuted before the ordinary Juſtices, and yet the Juſtice in Eyre concerning vert, Veniſon and other things retains his ſpecial Juriſdiction. In *France* as *Sanction* Writes, the Lords of Mannors adjoyning to Navigable Rivers, have ſeveral Rights of Fiſhing, and other commodities, by the Kings grant or by Preſcription, and if they be diſturbed they may have their remedies, in the Ordinary Courts of Juſtice, but as touching the free uſe of the Rivers in reſpect of Navigation, and that which concerns the Publique, the ſpecial Officers called the Maſters of the Waters, (whoſe Authority in this Kingdom belongs unto the Admiral) have the charge thereof, and if any Impediments be given, or Annoyances done in thoſe reſpects, it belongs to their Juriſdiction and power to reform the ſame.

Juriſdict. of Courts p. 283. *lib.* 2. *de Eaux & Foreſts art.* 1. *cap.* 1.

Touching the particulars, and firſt of that of the Replevin in the time of *Edw.* 1. concerning a Ship taken in the Sea, and brought into a River, and the Defendants being over-ruled to Anſwer, the Reaſon was, as *Berry* the Chief Juſtice ſaid, becauſe the King would have the Peace kept, as well by Sea, as by Land, Mr. *Selden* in his Notes upon *Forteſcue*, recites the caſe more fully and gives another Reaſon, *viz.* That *William Crake de Holtham* was Summoned to Anſwer a complaint of *Robert de Beauſe*, for taking away a Ship of the value of 40 *l.* on the Sea, near *Scarborough*, to which it was pleaded by the Counſel, that the Plaintiff did count or declare of a thing taken on the Sea, out of any County, ſo that if the matter were put in iſſue before the County, it could not be reſolved what Sheriff ſhould Summon the Country, and that the Admiral was appointed by the King to hear and determine Sutes of things done on the Sea, *&c.* Whereunto *Berry* Chief Juſtice of the Common Pleas Anſwered, we have a general Power throughout all *England*, but of the Power of the Admirals of which you ſpeak, we know nothing, neither will we Aſſign our Power to them without Commandment from the King, touching which you ſhew nothing; *Haward* ſaid, The place is ſo near, that if a man had killed one there, he ſhould have been taken, and brought to the Land, and Hanged, as well as if the Fact had been committed on the Land; *Mettinggam* ſaid more, we tell you that we have power of things done on the Sea, as upon the Land, and therefore we order you to anſwer; The Reaſon which Mr. *Selden* gives, was becauſe in thoſe times the Common Law had Conuſance of things done on the Britiſh Sea within the view of the Land, although afterwards it kept its limits, *infra corpus comitatus*, *Leaving the Sea wholly to the Admiral*; So that according to the Verſe, ſometimes applyed by Sir *Edward Coke*, *Judicis officium eſt, ut res ita tempora rerum Quærere*, the Caſe adjudged in the time of *Edw.* 1. can be no preſident for ſubſequent times, when the Admiralty Juriſdiction was better ſettled; and ſo it falls out with Sir *Edw. Coke's* Obſervation upon that Caſe, *viz.* That when the taking of a thing is partly in the Sea, and partly in a River, within the County, the Common Law ſhall have the Juriſdiction, becauſe that in latter times, it hath been reſolved otherwiſe, as in the Mayor of *Harwich* his Caſe, which was, That the Vice-Admiral of *England* having ſeized a Maſt floating on the Sea, cauſed certain Fiſher-men to draw it to ſhore at *Harwich* in *Suffolk*, where the Mayor then claiming Admiralty Juriſdiction, likewiſe ſeized it, for which he being ſued in the Admiralty Court of *England*, moved for a Prohibition; but the Judges were of Opinion that it did belong to the Admiral of *England*, and denied a Prohibition, becauſe the ſeizure at Sea, and drawing to ſhore at *Harwich* was one continued Act, and therefore the drawing it to ſhore at *Harwich*, gave no right to the Mayor of *Harwich*. The like may be gathered from a Reſolution *in communi banco*, 40 *Eliza. viz.* An Inhabitant of *Plymouth*, being Owner of a Ship, joyned in the Furniſhing and Victualling her, and ſent her to Sea, in which imployment the Captain of the Ship by Piracy took a *French*-mans Ship Laden with Salt, and brought her into *Plymouth*, and ſold his Salt to the Owner; whereupon the *French*-men ſued the *Plymouth*-man being Owner, in the Admiralty Court, for the Ships goods, and upon ſuggeſtion that part of the wrong was done upon the Land, a Prohibition was awarded, but after a long debate, a Conſultation was granted, becauſe the firſt wrong was done upon the Sea.

cap. 32. *p.* 31.

Secondly, Touching the Coroners Exerciſing his Office (in the time of *Edw.* 2.) in an Arm of the Sea, where one might ſee what was done on one ſide, and on the other; whereupon *Stanford* concludes that by the Common Law, before the Statute of the 2 *Hen.* 4. (or rather of 15 of *Rich.* 2.) the Admiral had no Juriſdiction, but on the high Sea, which onely Authority, ſaith Sir *Edward Coke*, was ſufficient to over-rule all Queſtions. It may be obſerved what was delivered in the precedent Caſe, concerning thoſe times; and it may be further noted what Mr. *Selden* Writes of the power and Authority of the Sheriffs in thoſe times, *Sæculis priſcis antequam ſummorum Admirallorum authoritas*, &c. *In ancient times before the*

Lib. 2. *c.* 14. *p.* 188.

the Authority of the high Admirals of England *was ſufficiently Eſtabliſhed by our Kings, and ſo diſtinguiſhed, that the Government of the Sea did wholly belong unto them, the Sheriffs had ſome Authority in the Sea adjoyning to the County, which did appear in that they did execute the Kings Precepts upon the Sea, and convey the Kings Ships from one Port to another, through the Seas, which was done about the time of* Hen. *the* 3. *and of* Edw. *the* 1. *but in ſubſequent times, it was never heard of,* poſtquam omnimoda Maris cuſtodia, &c. *after that all manner of guarding the Sea,* &c. *was by our Kings referred to the High Admiral, and to them only and their Deputies, which now belongs unto them by right unqueſtionable.* In which times if the Coroner did Exerciſe his Office, where at this time he cannot, for the reaſon aforeſaid, it may be granted, but no good Argument can be drawn from thoſe times to the times following, when the Admiralty-Juriſdiction was better ſettled.

Thirdly, The Authority of the Marſh Grounds, over which the Sea did flow and reflow, adjudged to be within the Mannor of *Brancaſter* in the time of *Edw.* 3. whence it is concluded to be within the County, is taken up by Sir *Edw. Coke* upon the credit of *Dyer :* But Sergeant *Callis* in his Readings cites the Record in this manner, *Contra Abbot de Ramſey de quodam proceſſu facto, verſus dictum Abbot, ad oſtendendum quare ſexaginta acra Mariſci in manum Domini Regis non debent ſeizari. Et Abbas reſpondet quod ipſa tenet Manerium de Brancaſter quod ſcituatum eſt juxta Mare, & quod eſt ibidem Mariſcus qui aliquando per Fluxum Maris minoratur, aliquando per Fluxum Mardo augetur,* &c. By which it is apparent, that thoſe grounds were claimed by that King, as waſte and floated grounds, and no parcel of the Mannor, which the Abbot did juſtifie, and howſoever they might be part of the County, yet they could not be places concerning which they might grow any Queſtion of Juriſdiction, for although they were ſubject to flowing and reflowing of the Sea, yet they were not either fit for the Sayling, nor arriving of Ships ; and admitting that ſome thing may be inferred from thence to prove that places where the Sea floweth may be within the bodies of Counties, yet it doth not wholly exclude the Admiral from having Juriſdiction, by Sir *Edw. Cokes* Learning, in Sir *Henry Conſtables* Caſe, where he ſheweth, That it hath been reſolved by the whole Court, that the ſoyl over which the Sea doth flow and reflow, *inter le High-water mark,* and the Low-water mark, the Land may be parcel of a Mannor of a Subject, and yet it was reſolved, That when the Sea did flow *ad plenitudinum,* the Admiral ſhould have Juriſdiction of any thing done upon the Water, betwixt the High-water mark, and the Low-water mark, by the ordinary and natural courſe of the Sea, and when the Sea doth reflow the Land may appertain to a ſubject, and then any thing done upon the Land ſhall be Tryed at the Common Law, for it is it is then parcel of the County, whereupon he makes an Obſervation, That beyond the Low-water mark the Admiral always hath Juriſdiction, and betwixt the High-water mark, and the Low-water mark, the Common Law, and the Admiralty have *diviſum impertum* interchangeably, and why the ſame ſhould not hold as well in Arms of the Sea, as in the open Sea, may deſerve ſome conſideration.

Fourthly, The allowance of the Common Law, of the Haven of *Hull* to be within the *Burrough,* in reſpect of an Action of Treſpaſs determinable at the Common Law, for the Reaſons before ſhewed in general, it doth not hinder but that in the ſame place if damage be done by one Ship to another, remedy may be given according to the Judgments in the Roll of *Oleron,* and ſo in reſpect of the place, though not of the cauſe, the Common Law, and the Admiralty may have *conjunctum imperium* occaſionally.

Secondly, There remain thoſe Authorities which ſhew that the Courts of Common Law have puniſhed, and reſtrained ſuch as have ſued in the Admiralty for things done in Havens and Navigable Rivers, as by actions of double Damages, Premuniries, and Prohibitions.

Touching the firſt it is related, That 6 *Hen.* 6. *John Burton* in the Common Pleas recovered againſt *Bartholomew Putt,* for double damages 1400 *l.* for that the ſaid

ſaid *Putt* had ſued *Burton* in the Admiralty for entring and taking away three Ships with Merchandizes and Priſoners, with force of Arms, *Super Altum mare*, whereas the taking thereof was in the Haven of *Briſtol*, *intra corpus Comitatus*.

Again, That the like Action 12 of *Henry* 6. was brought by *Robert Cupper*, againſt *John Reyner*, who had ſued him in the Admiralty Court for entring his Ship in the Haven of *Tarmouth*, *infra Corpus Comitatus Norf.*

Secondly, concerning Premuniries, it is ſaid, That 38 of *Hen.* 6. one was brought by *John Caſſy*, againſt *Richard Beauchamp*, and *Thomas Paunce*, for that they ſued him in the Admiralty Court for taking away certain *Jewels ſuper Altum mare*, whereas he took them *apud Stratford-Bow infra corpus Comitatus Middleſexiæ.*

Again, That in the 9 of *Hen.* 7. a Premunire was brought for a Sute in the Admiralty Court for taking and carrying away, *Quandam naviculam apud Horton Key, at South Lynn*, ſuppoſing the ſame to have been done *ſuper altum mare.*

It cannot be denied but that theſe Authorities eſpecially contain *forcible Arguments*, and fit to fright men from ſuing in the Admiralty Court, but how *reaſonable*, it may be conſidered.

Touching the Action of double Damages, in the leading Caſe of *Burton* againſt *Put*, the point of Iſſue was (as it may be ſuppoſed) whether the thing done in the River of *Briſtol*, were done within the Body of the County, and Eight Terms (as Sir *Edw. Coke* relates) were ſpent in deliberation of the Caſe, which argues that the Judges could not eaſily agree upon the ſame, and happily the Reaſon was, becauſe the Statute of *Henry* 4. for double Damages, relates onely to that of the 13 of *Richard* the 2. *chap.* 5. and the Action was layed upon that of the 15 *Richard* the 2. *chap.* 3. Touching things done within the Bodies of Counties, it being not proper to extend a penal Law from one Statute to another ; and how rightly it was ſo adjudged, may be better conſidered ; and it may be thought upon, why that being a leading Caſe, and having received ſo long deliberation, the Reaſons of the Reſolutions of the Judges are no way publiſhed.

It may be farther noted as to our purpoſe, that the taking of Ships in the Haven of *Briſtol* was done with force of Arms, which made it more than an ordinary buſineſs, of which the Admiral claimeth the Conuſance in ſuch places, but was of the condition of thoſe matters which belong unto him onely upon the Sea; the other Caſes of double Damages, for ought appears to the contrary, might be for matters of Treſpaſs, committed likewiſe by Force and Arms.

Touching Premunires brought for ſuing in the Admiralty Court, Sir *Edw. Coke* ſaith, That they being brought upon the Statute of the 16 of King *Rich.* 2. for ſuing in *Curia Romana aut alibi*, are ſo evident, and of ſo dangerous a conſequence, as no application ſhall be made thereof. And for the dangerous conſequence it is moſt true, for that the penalty intended in that Statute extends to the Impriſonment of the Perſon during pleaſure, and the loſs of all his Goods, and of the profits of his Lands during Life ; and for the application which he forbears, it may be conceived that his meaning was that the Admiral, or his Judge might be made liable thereunto; but for the Evidence that by *Curia Romana aut alibi*, the Court of Admiralty ſhould be underſtood, under his favour it is not ſo clear ; nor if the Statute be well conſidered, can it with any Reaſon be maintained, the word *Alibi*, or elſewhere in that Statute was in truth intended of *Avignion* in *France*, or ſome other place, to which the Pope and his Court in thoſe times did uſually remove; and that Statute being intended to exclude the Foreign Authority of the Pope, it might be thought neceſſary to debar the People of this Kingdom from having intercourſe to the Popes Conſiſtory, whether at *Rome* or any where elſe ; and when the Popes Anthority and his Laws were in force in this Kingdom, and no way depending upon the Crown, the word *Alibi*, or elſewhere, was held to extend to Biſhops Courts, if they medled with Temporal Cauſes belonging to the Kings Courts, eſpecially if they took upon them to reverſe, or diſparage

Judgments

Judgments given in the Courts of Common Law; but how the word *Alibi* ſhould be applyed to the Kings Court of Admiralty, never relating to any Foreign Power, and proceeding onely by thoſe Laws which are allowed by the King to be in force in that Court, it is a Miſtery beyond any ordinary imagination. It may be further Noted, that although it be ſaid that the two Premunires were brought upon ſuch occaſions, yet it doth not appear that any Judgement was given upon any of them.

Laſtly, For confirmation and concluſion of this Point; it may be added, that before the King and his Council it was likewiſe agreed unto by all the Judges, *That the Admiral may inquire of, and redreſs all Annoyances and Obſtructions in Navigable Rivers beneath the firſt Bridges, that are any Impediment to Navigation and Paſſage to and from the Sea; and alſo try all perſonal Contracts and Injuries done there which concern Navigation upon the Sea, and that no Prohibition is to be granted in ſuch Caſes.*

ASSERT. VII.

That the Admiral of England *may hold Plea of Contracts, and other things done beyond the Sea, relating to Navigation and Trade by Sea.*

B. b. p. 3. & *p.* 157. TO maintain that the Court of Admiralty may hold Plea of Contracts, and other things done beyond the Sea; It is alledged, Firſt, That by the Ordinance made by King *Edward* the Firſt, and His Lords, at *Haſtings*, which is extant in the Antient Book of Admiralty, it was Ordained that *Charum Contract*, &c. *That every Contract made between Merchant and Merchant, or betwixt Merchant and Mariner beyond the Sea, or within the flood-mark, ſhall be Tryed before the Admiral, and no ways elſewhere.*

Secondly, It may be taken into conſideration, That ſuch buſineſſes amongſt Merchants and Seamen, are to be determined according to the *Civil Law, and equity thereof*, as alſo according to the Cuſtoms and uſages of the Sea; Mr. *Selden* in his Notes upon *Forteſcue*, obſerves out of *Bartolus*, *Quod in Curia mercatorum debet judicari ex æquo & bono, omiſſis juris ſolennitatibus*, which the Admiralty Judges may, and do Obſerve, but the Courts of Common Law hold they muſt do otherwiſe. *Malines* relates an inſtance of a Merchant-ſtranger, who having ſold Commodities to three ſeveral Merchants of *London*, took one Bond of them all for the payment of 300 *l.* and one of them breaking, and being Impriſoned, he was contented to Compound with him for the fifth part of his Debt, or for 20 *l.* in lieu of a 100 *l.* conceiving him as a third party to be liable for no more; and having received that ſum, gave him a Releaſe, and afterwards the two other parties neglecting to pay him their parts he was adviſed to Sue them at the Common Law, where he was given to underſtand, That if a man Releaſe one of his Debtors, who is bound with others, by way of acquittance, they are all Releaſed and acquitted thereby, which was contrary to the Rule of Equity, and that ſimplicity and juſt dealing which is expected amongſt Merchants, which do not admit that a mans action ſhould operate beyond his intention, and that a favour yeilded to one in neceſſity, ſhould not extend further to his prejudice, in reſpect of thoſe which were in better condition.

P. 1. c. 13.

Thirdly, to the like purpoſe, it is obſerved, that in Contracts and Bargains, betwixt ſuch Perſons, thoſe Solemnities are not required which are neceſſary in Deeds at the Common Law, as of Signing, Sealing and Delivering, to make their Bills and Obligations of force, and the bearers of ſuch Bills according to the courſe of Merchants, ſhall be admitted to demand, and recover without Letters of Attorney.

P. 1. c. 13.

Fourthly, It is conſiderable, that Inſtruments made beyond the Sea, have uſually Clauſes relating to the Civil Law, and to the Law of the Sea. *Malines* ſhews, That when two or three take up Mony at Intereſt, and all bind themſelves as Principals, generally according to the Civil Law and cuſtome of Merchants, every Perſon is bound, but for his own part, and therefore, where it is intended, that for the better ſecurity, every man ſhould be *bound in ſolidum*, in the Inſtrument of the Contract, there is a Declaration and Renunciation made *of all Priviledges, and eſpecially of thoſe which are called, Exceptio diviſionis, & ordinis excuſſiones, and beneficii. Epiſtolæ divi Adriani.* In *Weſts* Preſidents concerning Merchants Affairs, there are the like forms, as where a man *obligat ſe hæredes & Executores ſuos, omnia bona mobilia*

&

& immobilia, præſentia & futura, tam ultra quam citra mare, ubicunq; exiſtentia, renuncians omnibus & ſingulis exceptionibus, &c. and amongſt the reſt he declares the form of a general Procuration to ſue for Debts in a Foreign Country, wherein it is ſpecified that power is given *ad Libelles, Petitiones, &c. articulos dandum, datiſque reſpondendum, ad Lites conteſtandum, & de calumnia vitanda juramentum, in animam conſtituentium præſtandum*; all which are as ſtrange to the Law of this Land, as the places from whence they proceed.

Fifthly, For that, as *Forteſcue* affirms, Contracts and Bargains made amongſt ſtrangers in another Realm, muſt be proved (otherways than in the Courts of Common Law) by Witneſſes, which, ſaith he, cometh to paſs, becauſe in thoſe parts there be no Neighbours, by whoſe Oaths Juries of Twelve Men may be made, as in Contracts and other caſes ariſing within the Realm, is accuſtomed to be done.

To avoid the Admiral's Juriſdiction in holding Pleas of Contracts, or things done beyond the Sea, Sir *Edward Coke* affirms, That Bargains and Contracts ſo made, wherein the Courts of Common Law cannot adminſter Juſtice, did belong to the Conſtable and Marſhall, for the Juriſdiction of the Admiral is wholly confined to the Sea, which is out of any County; Whence it may be gathered, That as to this point he intends for Authorities the Statutes of the 13th of *Richard* the Second, which ſets forth the Juriſdiction both of the Conſtables and Marſhals Court, as alſo of the Court of the Admiralty.

That concerning the Conſtable and Marſhal, is as far from the purpoſe, as it was from Sir *Edward Coke*'s Thought to give any addition of Power to that Court. The Act declares, *That to the Conſtable and Marſhal it belongs to have Conuſance of Contracts, and Deeds of Arms out of the Realm*; whence it is inferred, That therefore out of the Realm, the Admiral ſhall have no Conuſance of Contracts, or matters concerning Navigation, and Trade: It may be better argued from the Act, That as the Parliament allowed to the Conſtable and Marſhal, Juriſdiction in Cauſes of Arms, and War, ariſing both within and without the Realm, which cannot be determined by Common Law, ſo it did intend Cauſes of Navigation and Trade ariſing either within or beyond the Seas, to be tryed by the Admiral, The Nature and Quality of the buſineſs, more conducing to the point of Juriſdiction, than the Circumſtances of the place where it happens; The Statute which allows the Admiral to meddle with things done upon the Sea, by Sir *Edward Coke*'s leave, doth not confine his Juriſdiction to the Sea, in reſpect of any place beyond the Sea, It is rather pretended to debar him from medling with things done within the Realm, which notwithſtanding, it being formerly ſhewed, that the Admiral may hold plea of Maritime Cauſes ariſing from Contracts made within the Land, it may be leſs needful to labour to prove that it doth not hinder him from taking Conuſance of Sutes concerning Navigation and Trade, ariſing from Contracts made and buſineſſes done beyond the Sea.

The other Authorities which may be callected, to prove how the Admiral hath no Juriſdiction of things done beyond the Sea, are a Writ in the Regiſter, and *Fitz Herbert*, and a number of Prohibitions.

That of the Regiſter is, If Goods be taken from an Engliſh-man in *Spain*, or beyond the Sea, and the party cannot obtain Juſtice there, he ſhall have a Writ of the Sheriff to arreſt the Bodies offenders, and to ſeize their Goods to the value, which proveth, ſaith Sir *Edward Coke*, that the Admiralty cannot hold Plea thereof, for that the party hath remedy at the Common Law; That Argument is as good, as if he had ſaid, There lies a Writ of Withernam at the Common Law, therefore no Letters of Repriſals can be granted in the Admiralty. It ſtands with great reaſon, that if a Subject be ſpoiled of his Goods in another Realm, and can have no remedy there, that the party, or the Goods belonging to him, being found within the Juriſdiction of the Common Law, they ſhould be made liable to ſatisfaction; And why ſhould it be thought unreaſonable, that upon the like occaſion, if the party, or his Goods be found within the Juriſdiction of the Admiralty, the Sub-

ject ſhould have remedy there? By this Authority concerns not Contract, or Bargains made beyond the Sea.

Beſides, how far this Writ agrees with the Common Law, it may be conſidered, in regard, Mr. *Selden* writes, in *Tribunalibus noſtri Juris Municipalis, &c.* in our Courts of Common Law, the Juriſdiction hath been ever held to be ſuch, that according to the ſtrict Laws antiently practis'd, an Action could not be brought upon a buſineſs, hapning elſewhere, than within the Kingdom, as for many Ages ſince it hath been held, that the Action ought to be rejected, unleſs the ground of it be ariſing for ſomething done within the Body of a County: And Sir *Edward Coke* recites divers authorities, by which the ſame is maintain'd as agreeable to the Common Law. But this Law, he allows, where the things were totally done out of the Realm, and Implies, that it is otherwiſe, where the Contract is made one Realm, and the Performance ought to be in another, for then (ſays he) as to the preſent purpoſe of neceſſity, the Conuſance muſt be where the Contract was made, for otherwiſe there can be no Tryal had at the Common Law, and that it is moſt reaſonable that it ſhould be ſo, becauſe the Contract is the ground and foundation of the Debt; But now in caſe a Contract be made in *partibus exteris & tranſmarinis*, whereby payment or performance is to be made within the Realm, notwithſtanding the Contract be the ground and foundation, yet the Juriſdiction follows the place of payment and performance, and no doubt for the ſame reaſon, becauſe otherwiſe there could be no pretence for a Tryal at the Common Law, ſo that the Rule is framed to the building, and not the building to the Rule.

The laſt Argument is, That divers Prohibitions have been granted upon Sutes brought in the Admiralty, for things done in *partibus exteris & tranſmarinis*, and the firſt is as ancient as the 36th of *Henry* the Eighth. But upon what Contracts, buſineſſes, or occaſions thoſe Sutes were grounded and commenced, it is not ſpecified; And to conclude this point as the former, Firſt, the third requeſt of the Judge of the Admiralty in the year 1575. (*viz.*) That the Judge of the Admiralty according to ſuch ancient Order made by King *Edward* the Firſt, and his Council, and according to the Letters Patents of the Lord Admiral for the time being, and allowed of other Kings of this Land ever ſince, and by Cuſtom time out of memory of Man, may have Cognition of all Contracts and other things ariſing as well beyond, as upon the Sea, without let or prohibition; The Anſwer is, *That it is agreed upon by the Lord Chief Juſtice and his Collegues.*

Secondly, All the Judges before the King and his Council *Octavo Caroli* agreed, That if Sutes ſhall be commenced in the Court of Admiralty for Contracts made, or other things done beyond the Sea, or upon the Sea, no Prohibition is to be awarded.

Concerning the Conceſſions of the Judges of the Kings-Bench, and the Reſolutions of all the Judges alledged for the Confirmation of the precedent Aſſertions, it may be noted, That touching the former, by them are intended certain Anſwers of the Chief Juſtice and other Judges of that Bench, to the Requeſts of the Judge of the Admiralty in the Year 1575. of which mention is made in the complaint of the Admiral, Objection 7. wherein it is ſet forth, That the Agreement made in *Anno Dom.* 1575. between the Judges of the Kings-Bench, and the Court of Admiralty, for the more quiet and certain Execution of Admiral-Juriſdiction, was not obſerved, to which Sir *Edward Coke* anſwers, that that ſuppoſed Agreement had not been delivered unto them, but having heard the ſame read before His Majeſty (out of a Paper not ſubſcribed with the hand of any Judge) they anſwer, that for ſo much thereof as differs from their preſent Anſwers, it was againſt the Laws and Statutes of the Realm, and therefore the Judges of the Kings-Bench never aſſented thereunto, as it is pretended, neither doth the phraſe thereof agree with the Terms of the Laws of the Realm.

It it is not probable that Dr. *Dunn*, then Judge of the Admiralty, would have produced ſuch an Agreement to the Judges before the King, but that he had ſome ground

ground for the ſame, which being ſuppoſed, it may as well infer that thoſe Conceſſions were agreeable to the Laws and Statutes of the Realm, becauſe thoſe Judges did aſſent unto them, as that they did not aſſent becauſe they were not agreeable to the ſame; And it may as well be doubted, whether thoſe things wherein thoſe Anſwers at time did differ from the Reſolutions of all the Judges in the 8th of King *Charles*, were agreeable to the Laws and Statutes of the Realm, as it is confidently affirm'd, that wherein thoſe Conceſſions did differ from thoſe Anſwers were againſt the ſame, wherein the phraſe of the Requeſts and Anſwers is not agreeable to the terms of the Common Law, is not ſo much conſiderable, as how the matters therein contained may conſiſt, both with Law and Equity; and to that end it may not be amiſs to recite them, as they are extant in ſeveral Manuſcripts in which are collected things of thoſe times remarkable, both concerning the Eccleſiaſtical Courts, and the Courts of Admiralty, as followed. 8. *Carol:*

12. *of May*, 1575.

The Requeſts of the Judge of the Admiralty to the Lord Chief Juſtice of her Majeſties Bench, and his Colleagues, with their Anſwers to the ſame. *Sir* Chriſtopher Wray, *L. Chief Juſtice*, *Dr.* Davy Lewis, *Judge of the Admiralty.*

That after Judgment or Sentence given in the Court of Admiralty, in any Cauſe or Appeal made from the ſame to the high Court of Chancery, it may pleaſe them to forbear the granting of any Writ of Prohibition, either to the Judge of the ſaid Court, or to her Majeſties Delegates, at the ſute of him by whom ſuch Appeal ſhall be made, ſeeing by choice of Remedy in that way, in reaſon he ought to be contented therewith, and not to be relieved any other way. 1 *Requeſt.*

It is agreed by the Lord Chief Juſtice and his Colleagues, that after Sentence given in the Delegates, no Prohibition ſhall be granted. And if there be no Sentence, if a Prohibition be not ſued for within the next Term following Sentence in the Admiralty-Court, or within two Terms after at the fartheſt, no Prohibition ſhall paſs to the Delegates. *Anſwer.*

That Prohibitions hereafter be not granted upon bare Suggeſtions or Surmiſes, without ſummary Examination and Proof thereof, wherein it may be lawful to the Judge of the Admiralty, and the party defendant to have Counſel, and to plead for the ſtay thereof, if there ſhall appear cauſe. 2 *Requeſt.*

They have agreed that the Judge of the Admiralty, and the party defendant ſhall have Counſel in Court, and to plead to ſtay, if there may appear evident cauſe. *Anſwer.*

That the Judge of the Admiralty according to ſuch an ancient Order, as hath been taken by King *Edward* the Firſt, and his Council, and according to the Letters Patents of the Lord Admiral for the time being, and allowed by other Kings of the Land ever ſince, and by Cuſtom time out of memory of Man, may have and enjoy cognition of all Contracts, and other things, riſing as well beyond, as upon the Sea, without let or Prohibition. 3 *Requeſt.*

This is agreed upon by the ſaid Lord Chief Juſtice, and his Colleagues. *Anſwer.*

That the ſaid Judges may have and enjoy the knowledge of the breach of Charter-parties, made betwixt Maſters of Ships and Merchants for Voyages to be made to the parts beyond the Sea, and to be performed upon, and beyond the Sea, according as it hath been accuſtomed time out of mind, and according to the good meaning of the 32d. of *Henry* 8. *chap.* 14. though the ſame Charter-parties be made within the Realm. 4 *Requeſt.*

This is likewiſe agreed upon, for things to be performed, either upon, or beyond the Sea, though the Charter-party be made upon the Land, by the Statute of the 32d. of *Hen.* 8. *cap.* 14. *Anſwer.*

That Writs of *Corpus cum Cauſa*, be not directed to the ſaid Judge, in Cauſes of the nature aforeſaid, and if any happen to be directed, that it may pleaſe them to accept of the Return thereof, with the Cauſe and not the Body, as it hath always been accuſtomed. 5 *Requeſt.*

Anſwer. If any Writ of this nature be directed in the Cauſes before ſpecified, they are content to return the Bodies again to the Lord Admiral's Goal upon certificate of the Cauſe to be ſuch, or if it be for contempt or diſobedience to the Court in any ſuch Cauſe.

Touching the Reſolutions of all the Judges, 8. *Caroli*, it may be conſidered, That in the preſence of the King's Majeſty, and Twenty three Lords, and others of his Majeſties Council, they were ſubſcribed unto by all the Judges, (viz.) *Thomas Richardſon*, *Robert Heath*, *Humphrey Dawenport*, *John Denham*, *Richard Hutton*, *William Jones*, *George Crook*, *Thomas Trevor*, *James Weſton*, *Robert Barkley*, *Francis Crawly*, and alſo by *Henry Martin* Judge of the Admiralty, and *William Noy* the Attorney General, and the Tranſcript thereof was ordered to be Entred in the Regiſter of the Council Cauſes, and the Original to remain in the Council Cheſt, 18. *Feb.* 1632.

Sir *Edward Coke*, concerning the Anſwers and Reſolutions of the Judges, to thoſe things which he calls *Articuli Cleri*, 3. *Jacob.* ſaith, That although they were not enacted by the authority of Parliament, as the Statute of *Articuli Cleri*, in the 9th of *Edward* the Second, was, yet being reſolved unanimouſly, by all the Judges of *England*, and the Barons of the Exchequer, they are for matters of Law, of higheſt authority, next unto the Court of Parliament; And it may be thought that theſe reſolutions of all the Judges touching the Juriſdiction of the Admiralty, ought to be of no lower eſteem, the rather for that the unanimity of all the Judges to the former, muſt be taken upon the credit alone of Sir *Edward Coke*, but as to the latter, the Evidence thereof doth appear by the joynt ſubſcriptions of all before named, which is likewiſe atteſted by Sir *George Crook*, who was one of them, who in his Reports of *Hillary* Term 8. *Caroli*, under the title of Reſolutions upon Cauſes of Admiral-Juriſdiction, writes that it was agreed, as followeth.

Firſt, If Sute ſhould be commenced in the Court of Admiralty, for Contracts or other things perſonally done beyond the Sea, no Prohibition is to be awarded.

Secondly, If Sute be before the Admiral for Freight, or Mariners wages, or for breach of Charter-parties, for Voyages to be made beyond the Seas, though the Charter-party happen to be made within the Realm, ſo as the Penalty be not demanded, a Prohibition is not to be granted; But if the Sute be for Penalty, or if queſtion be made, whether the Charter-party be made or no, or whether the Plaintiff did releaſe, or otherwiſe diſcharge the ſame within the Realm, this is to be tried in the Kings Courts, and not in the Admiralty.

Thirdly, If Sute be in the Admiralty, for building, amending, ſaving, or neceſſary Victualling of a Ship, againſt the Ship it ſelf, and not againſt any party by name, but ſuch as for his intereſt makes himſelf a party, no Prohibition is to be granted, though this be done within the Realm.

Fourthly, although of ſome Cauſes ariſing upon the *Thames* beneath the Bridge, and divers other Rivers beneath the firſt Bridge, the Kings Courts have Conuſance, yet the Admiral alſo hath Juriſdiction there, in the point eſpecially mentioned in the Statute of the 15th of *Richard* the Second, and alſo by Expoſition, and Equity thereof, he may enquire of, and redreſs all Annoyances and Obſtructions, that are or may be any Impediment to Navigation, and paſſage to or from the Sea, and alſo to try perſonal Contracts, and Injuries done there which concern Navigation on the Sea, and no Prohibition is to be granted in ſuch caſes.

Fifthly, If any be impriſoned and upon *habeas Corpus* brought, it be certified, that any of theſe be the cauſe of his Impriſonment, the party ſhall be remaunded.

Subſcribed the 4. *Feb.* 1632. by all the Judges of both Benches.

Sir *George Crook's* Reports being publiſhed by Sir *Harbotle Grimſton*, are approved and allowed as for the common benefit, by the Judges then being, (viz.) by *John Glynn*, *Oliver St. John*, *Edward Atkins*, *Robert Nicholas*, *Matthew Hales*, *Hugh Windham*, *Peter Warburton*, and *John Parker*.

It

It may be preſumed, that what ſo many perſons, Eminent both for their Place, and alſo for their knowledge of the Laws and Statutes of the Realm, did ſo deliberately and cautiouſly reſolve upon, and others of like quality have countenanced, ought to be received and reſpected as ſufficient Authorities, as to thoſe points whereof they did declare their Reſolutions, notwithſtanding the confident Opinions of any others, either private, or ſingular perſons, to the contrary: And that the King's Majeſty and his Councils approbation being added thereunto, ſhould be of force enough to ſettle all doubts and differences concerning the ſame, the rather, for that antiently (as before is ſhewed) the Kings of *England*, with their Council only, have made Conſtitutions concerning the Admiralty, and that in point of Juriſdiction, and it is apparent by the ancient Record, cited both by Mr. *Selden*, and Sir *Edward Coke*, That the moſt famous Prince, King *Edward* the Third (in whoſe time the Admiralty received its chief eſtabliſhment) in the Twelfth Year of his Reign, did conſult and adviſe with his Council, and his Judges concerning the ſame; And it may ſeem ſtrange, that whereas by the Statute of the 13th of *Richard* the Second, (whoſe Acts are inſiſted upon as the greateſt obſtructions to the Admirals Juriſdiction) the King's Council alone are enabled to decide, what belongs to the Conſtables and Marſhals Juriſdiction, the King himſelf with his Council and Judges, ſhould not have as much power to determine what belongs to the Juriſdiction of his Admiral. *Stat.* 1. 6. 2.

ASSERT. VIII.

That the Courts, and Judges of the Common Law, do intermeddle, and interrupt the Courts of Admiralty in Cauſes properly belonging to the ſame.

HItherto it hath been Endeavoured to be made appear, That the Proceedings in the Courts of Admiralty, in the chief points in difference with the Courts of Common Law, may conſiſt with the Laws and Statutes of the Realm; It may now be taken into Conſideration, how far the Proceedings of the Courts and Judges of the Common Law, in intermedling with Cauſes properly belonging to the Admiralty, and in obſtructing the Proceedings of that Court, may be juſtified; By the former, is intended their drawing of ſuch Cauſes by actions of Trover, and of Treſpaſs, to their Conuſance, by the latter their diſparaging of Stipulations, and preſcribing the forms of Libels in ſuch Cauſes.

The former may the rather be inſiſted upon, in regard Sir *Edward Coke* doth ſo often, and ſo earneſtly in general enveigh againſt the encroaching of the Court of Admiralty upon the buſineſſes belonging to the Courts of Common Law, and in particular where he chargeth, That in the bleſſed time of Peace, thoſe who belong to that Court, wanting buſineſſes proper to that Juriſdiction, do encroach upon matters belonging to the King's Courts, leſt they ſhould ſit idle, and have nothing to do; the like practice of encroaching being far more unexcuſable in thoſe, who belong to the King's Courts, which do always abound with buſineſſes ſufficient for the ſame.

Concerning the Actions of *Trover*. Amongſt the grievances complained of by the Admiral, 8. *Jacob*. It is preſented in the firſt place, That whereas the Conuſance of all Contracts, and other things done on the Sea, belonging to the Admiral's Juriſdiction, the ſame are made tryable at the Common Law, by ſuppoſing the ſame to have been done in *Cheapſide*, or ſuch places: And under favour, the anſwer thereunto is neither clear, nor direct, nor to the purpoſe; For the ground of that anſwer being laid, That the Admiral hath no Conuſance of any thing done within any County, it is ſaid, That it is not material whether the place be upon the Water, *Infra fluxum Aquæ*; but whether it be upon any Water within the County; Wherefore it is acknowledged, That of things done upon the Sea, out of any County, the Admiral ought to have Juriſdiction, and that no Preſidents can be ſhewed that any Prohibition hath been granted for any Contract, Plea, or Quarrel, for any Maritine cauſe done upon the Sea. In this anſwer it is confeſt, That the Admiral ought to have Juriſdiction of things done on the Sea, and that no Prohibitions have been granted for any ſuch cauſes; but whether by the ſuppoſal or fiction of a Ships arriving in *Cheap-ſide*, the Courts of Common Law do hold Plea of things done on the Sea, it is neither confeſſed nor denied, much leſs is there any reaſon given for the ſame. Where it is ſaid, It is not material whether the place be upon the Water, *infra fluxum & refluxum Aquæ*, but whether it be upon any Water within the County, That may be true, in reſpect that it is ſuppoſed that all things done it the County belongs to the Conuſance of the Common Law; but when the place where a thing is done belongs apparently to another Juriſdiction which pretends as well to the right of the place, as to the right of the cauſe, the place of the action can no ways be ſuppreſſed, and another ſuggeſted in the room thereof; for if that be permitted, the one Juriſdiction being the greater, a more potent may

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ſoon ſwallow up the other, not only to the prejudice of the Subjects for whoſe good the diverſity of Courts were erected, but alſo the wrong of the Prince from whom thoſe Juriſdictions are derived.

Sir *Thomas Rydlye* in his view of the Civil Laws, further ſhews how injurious to the Admiralty, and unreaſonable this practice is, in regard that in Law no Fiction ought to be admitted, but ſuch as is both poſſible and equitable; Firſt, That it ought to be Poſſible, becauſe otherwiſe it were to admit that by way of ſuppoſition, which Nature will not allow; and therefore although one that is dead, to ſome conſtructions of Law, may be feigned to be alive, if at that time any of his equals in age be ſtill living, yet one who dyed two hundred years ſince, cannot to any purpoſe be ſuppoſed to be living, all of the ſame age being long before dead. Secondly, The Fiction ought to be Equitable, becauſe if there be no reaſon for it, it is altogether unneceſſary and uſeleſs; and therefore although the Law may admit a Fiction and ſuppoſition, that a Child in the Mothers Womb, is already born, for its benefit, in regard that otherwiſe it might be deprived of its Filial portion, or ſome other right in equity belonging to it; yet where there is no ſuch reaſon or equity, it ought not to be admitted, as vain and ridiculous; But for the fiction of a Ship to arrive in *wardo de cheap*, where there is no Water to bear or carry, is of a thing utterly impoſſible; and it is wholly void of equity, becauſe a Tryal of any buſineſs thereupon cannot obtain any juſt and fair remedy thereby at the Common Law, which might not have been had in the Court of Admiralty, which is a more competent and proper Court, for the tryal of ſuch things, than any Court of the Common Law.

Secondly, Concerning Actions of Treſpaſs, the Admiral in his ordinary capacity claiming no Juriſdiction of offences againſt the Crown, but only on the Sea, and of wrongs and injuries done in other places without force or violence, to make ſuch Cauſes tryable in the King's Courts, it is ſuggeſted, that they were done *vi & armis*, which is the uſual form of Indictments of Treſpaſſes in the King's-Bench (as of cutting of a Purſe) although in truth there were no fear, nor violence uſed in committing the ſame.

Touching the interrupting and obſtructing the Proceedings in the Court of Admiralty in Cauſes properly belonging to the ſame, concerning Stipulations and Libels, although it may be preſumed, that what Sir *Edward Coke* affirms, *That where the principal matter is acknowledged to be of Eccleſiaſtical Cogniſace, the Temporal Judges ought not to call in queſtion the form of Proceedings, though they be againſt the reaſon of the Common Law*, becauſe *Cuilibet in ſua arte merito credendum*, that the ſame ſhould be allowed in the Admiral Court. Coke's 4 Reports, p. 29. 3 H. 6. 14. 11. H. 7. 9.

Yet in the third Objection of the Complaint, 8. *Jacob.* it is ſhewed, That whereas time out of mind the Admiral-Court hath uſed to take Stipulations for appearance and performance of the Acts and Judgments of the ſame Court; It is now affirmed by the Judges of the Common Law, that the Admiralty-Court is no Court of Record, and therefore not able to take ſuch Stipulations, and hereupon Prohibitions are granted to the utter overthrow of that Court. The anſwer whereunto is, That the Admiralty proceeding by the Civil Law, is no Court of Record, and therefore cannot take any ſuch Recognizances as a Court of Record may do, and for taking of Recognizances againſt the Law of the Realm, we find that Prohibitions have been granted, as by the Law they ought: And if an erronious Sentence be given in that Court, no Writ of Errour, but an appeal to certain Delegates doth lie, as it is apparent by the Statute of the 8. *Eliz. Reginæ*, *Cap.* 5. which proveth that it is no Court of Record. Whereunto it may be replied:

That ſome things done by, or before the Admiral, are matters of Record, may be maintained from an ancient Ordinance of King *Richard* the Firſt, with advice of the Lords, at *Grimsby*, viz. *That when the King writes by his Letters Patents to the Admiral to arreſt Ships more or leſs for his ſervice, and that the Admiral ſhould write to his Lieutenant to ſee things put in execution accordingly, foraſmuch as the Admiral* B. b. p. 28. & p. 15.

and

and his Lieutenants are of Record, After the Admiral ſhall have written to the King, or to the Chancellour of England, *the names of the Ships arreſted, together with the names of the Owners and Maſters of them, in that caſe neither the Owner of the Ship, nor the Maſter, ſhall be admitted to ſay that the Ship is not arreſted*; but admitting that the Court of Admiralty is not a Court of Record in ordinary matters, no more are the Stipulations taken there, ſuch Recognizances as are required to be taken in Courts of Record by the Common Law, thoſe Stipulations cauſing no privileged obligations before other bonds, nor extending to any part of mens Lands, which is otherwiſe in Recognizances taken in Courts of Records by the Common Law; And it may ſeem ſtrange that Sir *Edward Coke* acknowledging and allowing the proceedings of that Court to be according to the Civil Laws, taking of Stipulations or Bails for the Parties appearance, and the performances of Decrees and Sentences in that Court, preſcribed by the Civil Law, *Ne judicia ſint eluſoria*, and univerſally practiſed, where judicial proceedings are according to that Law, as likewiſe in this Kingdom in the Conſtable and Marſhal's Court, and in the Courts of the Univerſities proceeding by the Civil Law, the ſame ſhould not be allowed in the Admiralty-Court.

And the complaint in this point may ſeem the more conſiderable, in regard that, to the Publique Notaries about the Exchange, without Exception or Controll it hath been allowed, That Merchants appearing before them, (in a manner nearer to the Recognizances of the Common Law) do acknowledge bonds, and bind, *Se & Executores, & bona tam immobilia quam mobilia preſentia in futura*, And ſometimes themſelves being abſent, the ſame things are done in their names by their Servants, or Factors, Exhibiting Procurations from them to that purpoſe; And it may be noted, that amongſt Sir *Edward Coke*'s Authories there cannot be deſcerned any Statute, Judgment, or Book-caſe, to make good the Anſwer to that Objection, in the Complaint.

Secondly, concerning Libels in the Court of Admiralty, The Lord *Hobard* in *Audly* and *Jennings* caſe affirms, that if a Contract in truth were made at Sea, and in the Admiral's Court it be laid generally, without ſaying *ſuper alto mari*, a Prohibition might lye, for the Libel muſt warrant the Sute in it ſelf; But Juſtice *Reeves* in his Argument, *Paſchæ 22. Caroli*, differs from him in opinion, and diſtinguiſhes betwixt a particular Juriſdiction, created in diminution of the general Courts of Common Law, and a particular Juriſdiction over things that never did belong to the Courts of Common Law, but which is wholly diſtinct from the ſame: In the firſt caſe he confeſſeth that it is neceſſary to allege the cauſe of Action to ariſe within the new created Juriſdiction, becauſe *prima facie*, nay *de Jure*, the Courts of Common Law have general Juriſdiction of thoſe things, but in the later caſe, as of the Admiralty, if the cauſe be Maritime, there is no need to averr it to have been done upon the Sea, out of any reſpect to the Courts of Common Law, for that it doth not tend to the diminution of any of thoſe Courts, and for Confirmation thereof he affirms, That the Juriſdiction of the Marſhalſey, ſtands partly upon the Statute *Articuli ſuper Chartas*, and the words of that Statute are as reſtrictive, as any words of the Statutes touching the Admiralty, and by the Books of the Common Laws, the Marſhall cannot hold Plea in ſome caſes unleſs both parties be of the King's Houſhold, nor in any caſe unleſs one of the Parties be ſo; yet it is reſolved, That the Declaration is good, although it be not averred therein, that any of the Parties be of the Houſhold, and therefore a *Fortiori* it is not neceſſary in the Admiralty to ſpecifie in the Libel the thing to have been done, *ſuper alto mari*, the Admiralty Juriſdiction being more diſtinct from the Common Law, than that of the Court of Marſhalſey.

ASSERT.

ASSERT. IX.

That the trial of Cauſes concerning Navigation and Trade in the Court of Admiralty, is more commodious for the Subjects, and Kingdom of England, *than in the Courts of Common Law.*

HOw much the maintenance and advancement of Navigation, and Trade by Sea, concerns the Kingdom, and Subjects thereof, Sir *Edward Coke* delivers, who ſaith, *That Trade and Traffique is the livelyhood of a Merchant, and the life of the Common-wealth, wherein the Kingdom, and every Subject hath intereſt; For the Merchant is the good Bailiff of the Realm, to Export, and Vent the Native Commodities, and to Import and bring in the neceſſary Commodities, for the defence and benefit of the Realm.* So much is confirmed by ſeveral Acts of Parliament, fram'd by common conſent of the Kingdom. The Statute of the 32. of *Henry* 8. *chap.* 24. ſets forth, *That it is notoriouſly known that the Realm of* England, *for the moſt part, is invironed with the Seas, ſo that the Subjects cannot convey, and tranſport their Wares, Merchandizes, and Commodities by Land, but only by Ships, and that the Navy, and multitude of Ships of the Realm, is very commodious and neceſſary, as well for the intercourſe and concourſe of Merchants, conveying and tranſporting their Wares and Merchandizes, and a great defence and ſecurity to this Realm, as well to offend and defend, as alſo for the maintenance of many Maſters, Mariners and Seamen, and alſo hath been the chief maintenance and ſupportation of Cities, Towns, Havens, and Creeks near adjoyning unto the Sea-coaſts:* Likewiſe that of the 43. of *Elizabeth, chap.* 12. declares, *That it hath always been the Policy of this Realm, by all good means to comfort and encourage the Merchant, thereby to advance the general wealth of this Realm,* the Kings *Cuſtoms* and *Strength* of Shipping, *&c.*

Comment upon Magna Chart. fol. 28.

It hath been formerly obſerved, That for the encouragement of thoſe who maintain Trade by Sea, in all Nations and States there have been ſpecial Judges appointed to hear and determine cauſes concerning Trade and affairs of the Sea; and it may be further noted, that ſuch Judges have been directed to proceed at ſuch times, and in ſuch manner, as might beſt conſiſt, with the opportunities of Trade, and leaſt hinder or detain Men from their Imployments. Amonſt the *Græcians*, as at *Athens*, it was provided, *That all Sutes betwixt Seamen and Merchants ſhould be determined in thoſe vacations when the Seas were barred, or in thoſe Months when Navigation was reſtrained*; So much is confirmed by *Salmatius*, *Eo tempore quo oritur Arcturus navigationes ſuas ut plurimum deſinebant mercatores, domumque redibant; Boedromion quippe menſis qui Septembri reſpondent, quo tempore ferè Arcturus oritur, terminus erat navigationum Atticarum, ideo ab eo menſe Munichionem uſque wuo menſe iterum ſe mari committebant, ac vela dabunt, Mercatores Athenienſes in urbe deſidebant, & lites ſuas diſceptabant, ut videre eſt apud Demoſthenem adverſus Apaturium.* Amongſt the *Romans* likewiſe, for the better diſpatch of Cauſes concerning Sea-buſineſſes, the Judges were ordered to proceed, *Levato velo*, and *de plano*, without that Solemnity, and Formality which was uſed in ordinary Courts, and Cauſes; So in *Italy*, *Spain*, and *France*, the Judges proceed in Cauſes concerning the Sea, Summarily and in a more compendious way than other Judges uſe; And the like, as Sir *John Davies* relates, hath ſeemed to the wiſdom of this Kingdom, *Our Parliament*, ſaith he, *have not only made extraordinary proviſions, for a more ſpeedy recovery of debts due unto Merchants,*

Sholes ſyntag. 47. tit. 37.

Petitus de Legibus Atticis l. 5. tit. 5.

C. de Naufragiis l. 5. & ibi Cujacius.

for their Merchandizes, than is provided by our Common Law, as appears by the Statute of Acton Burnel, *made the 11th of* Edward *the Firſt, and the Statute* De Mercatoribus, *made the 13th of* Edward *the Firſt, but alſo hath allowed a Court of Proceedings in Caſes of Merchants, different from the courſe of our Common Law; For by the Statute of the 27th of* Edward *the Third*, cap. 2. *it is declared, That the proceedings in Cauſes of Merchants ſhall be from day to day, and from hour to hour, according to the Law of the Staple, and not according to the courſe of the Common Law*; and by another Article in the ſame Parliament, *That all Merchants coming to the Staple ſhall be ruled by Law-merchant, touching all things coming to the Staple*, and not by the *Common Law of the Land*; and by another Article, *That neither of the Benches, nor any of the Judges of the Common Law ſhall have any Juriſdiction in thoſe Caſes.* To which may be added the Statute of the 32. of *Henry* 8. *chap.* 15. and of the 43. of *Elizabeth, chap.* 12. which direct, *That ſuch Cauſes betwixt Seamen and Merchants ſhall be ordered ſummarily, and without delay, and as diſcretion ſhall ſeem moſt convenient.* All which was, and may be obſerved in the Court of the Admiralty, which in many Cauſes proceed at any time, and in all Cauſes ſummarily, and according to Equity, but neither is, nor can be obſerved in Courts of Common Law, which are open only in Term times, and proceed in an ordinary and ſtrict way.

Secondly, For the advantage of thoſe who uſe Navigation, and Trade by Sea, The Law-merchant and Laws of the Sea admit of divers things not agreeable to the Common Law of the Realm, which may be better inſiſted on in the Court of Admiralty, than in the Courts of the Common Law. So much is declared by Sir *John Davyes*, relating ſeveral Inſtances to that purpoſe. Firſt, *If two Merchants, ſaith he, be joynt Owners, or Partners of Merchandizes, which they have acquired by a joynt Contract, the one ſhall have an Action of Account againſt the other*, Secundum Legem Mercatoriam, *but by the Rule of the Common Law, if two men be joyntly ſeized of other Goods, the one ſhall not call the other to account for the ſame.* Second, *If two Merchants have a joynt Intereſt in Merchandizes, if one dye, the ſurviver ſhall not have all, but the Executor of the party deceaſed, ſhall by the Law-merchant call the ſurviver to an account for the Moity, whereas by the Rule of the Common Law, if there be two joynt Tenants of other Goods, the ſurviver* Per jus accreſcendi *ſhall have all.* Third, *In an Action of Debt upon a ſimple Contract*, which is without a Deed in Writing) *the Defendant by the Common Law may wage his Law*, That is, he may barr the Plaintiff from his Action, by taking an Oath that he doth not owe the Debt, *but when one* John Cumpton, *Merchant, brought an Action of Debt* Secundum Legem Mercatoriam *againſt another Merchant upon a Contract, without* Deed, *and the Defendant would have waged his Law, he was not permitted ſo to do*, and the Judgment was given for the Plaintiff. It is not hereby intended that the Courts of Common Law cannot or do not take notice of the Law-Merchant, in Merchants Caſes, but that other things likewiſe conſidered, it might be thought reaſonable, if they ſo deſire, to allow them the choice of that Court, where the Law-Merchant is more reſpected, than to confine them to other Courts, where another Law is more predominant. Beſides, there may be danger of doubt thereof, becauſe thoſe things are not approved for proofs at the Common Law, which are held ſufficient in the Admiralty amongſt the Merchants; for as Sir *John Davies* further obſerves, *At the Common Law no mans Writing can be pleaded againſt him, as his Act, and Deed, unleſs the ſame be ſealed, and delivered: But in Sutes between Merchants, Bills of Lading, and Bills of Exchange, being but Tickets, without Seals, Letters of advice, and Credence, Policies of aſſurance, Aſſignations of Debts, all which are of no force at the Common Law, are of good credit and force by the Law-Merchant.* To which may be added, what *Malines* obſerves, That the bearer of ſuch Bills, by the courſe amongſt Merchants, ſhall be admitted to demand, and recover the Contracts, without Letters of Attorney, which is not admitted in the Common Law. It is moreover conſiderable, That the Law of the Sea looks one way, when the Common Law looks another; As for inſtance, A Ship is Freighted, or hired for a Voyage to the *Indies*, at 20 l. per month by Charter-party,

party, it appeareth that having been eight Months in the Imployment of the Merchant, who Freighted her, before she makes any Port, with her Lading she perisheth in the Sea, in this case by the Common Law, as it hath been averred, the Owner of the Ship ought to have Freight for eight Months: But by the Law of the Sea, which hath always been allowed, The Merchant losing his Goods, the Owner loseth his Freight; Again, if the Owner loseth his Freight, the Mariner, although he escape, loseth his Wages for the time he served, which happily would not be thought so if he sued at the *Guild-Hall* for the same.

Thirdly, For encouragement and advantage of those who use Navigation and Trade by Sea, it is considerable, that in the Court of Admiralty, one and the same Action may be brought against diverse and several persons, undertaking the same business, as when many joyn in subscription to a Policy of assurance, but if a Sute be brought at the Common Law, every man must be sued severally, which the Parliament in the Act concerning assurances, held inconvenient; and in the like manner, divers and several Persons may joyn in the same Sute, as Mariners for Wages, at a small charge to themselves, with little prejudice to the Masters, or Owners which are sued, and obtain a Decree or Order altogether, whereas when they sue at the *Guild-Hall*, every man sues severally, to the great charge of every particular, and to the excessive damage of the Masters, or Owners, if Judgments be given against them, Besides the inconvenience, (of which the Statute of the 28. of *Henry* 8. *cap.* 15. takes notice) That if Mariners, or Shippers, which by reason of their often Voyages and Passages must depart, without long tarrying and protracting of time, be enforced to attend the ordinary terms of the Common Law.

Fourthly, The Court of Admiralty for the conveniency and dispatch of Merchants, and Seamens Causes, admits of Proofs, which the Courts of Common Law do not allow, for in that Court according to the Civil Law, the Plaintiff may be relieved by the Defendants answer upon Oath, which in the ordinary Courts of the Common Law is not afforded; Again, whereas in those Courts the Evidence must be produced at the Barr, before the Jury, Seamen, and Mariners, which are many times necessary witnesses, for the reason before expresst, cannot be present without great prejudice to themselves and the Trade of the Kingdom; But in the Admiralty Court they may be produc'd at any time after the Sute is begun, and their Examinations being taken in Writing, they have liberty to follow their own, and the common occasions. Moreover, many times in causes concerning Navigation, and Trade by Sea, no proof can be made but by Witnesses remaining in Foreign parts, to which the Writs of the Common Law do not extend, but those Witnesses by Commission out of the Admiralty-Court, are usually sworn and examined by Magistrates in those places, and their examinations so taken are allowed for sufficient proof upon return.

Divers other Instances might be given, by which it would appear that the Court of Admiralty can give redress in Sutes concerning Navigation and Trade with more conveniency than the Courts of Common Law; But these considered, and how much it concerns the good of the Kingdom, and those who support Navigation and Trade, may be sufficient to discover, which Court may be best justified in proceeding in Causes of that nature.

What inconvenience may follow both to the Private and Publick by the interposing of Courts of Common Law, and by obstructions made unto the Admiralty in such businesses, may appear in one particular, that is concerning Charter-parties and Freight due for imployment of Shipping. There is but one instance given of a Sute brought at the Common Law upon a Charter-party, *viz.* the 28. of *Elizabeth*, which was on the Merchants part for breach of Covenant, *viz.* for not staying in a Port of discharge so many days as were agreed upon, for which the Owner was condemned in 500l. without any respect to the Loss or Damage which the Merchant had sustained: And if it be considered how many Clauses there are in Charter-parties, and Covenants of things to be performed for which the Owners

are bound under a general penalty, if upon every breach advantage ſhould be taken in extremity, no man would have great comfort in hiring out Ships to Sea: And it may be obſerved, that there is no Preſident that ever any man ſued for Freight at the Common Law, which argues much difficulty in that way, as probably the performance of the Voyage being to be maintained by ſuch proofs as cannot be produced in thoſe Courts. And whereas it is affirmed, That infinite Prohibitions have been granted in Cauſes commenced in the Admiralty upon Charter-parties, it muſt follow, that thereby was occaſioned infinite loſs to the Owners of the Shipping, it being moſt probable by what hath been obſerved, That the cauſe for Freight being ſtopped in the Admiralty, there was no means to recover the ſame in the Courts of the Common Law. For that is a certain Rule, That that Merchant which declines that Court knows he is in no danger elſewhere; and it falls out many times, That for long Voyages great ſums are due for Freight, and Merchants not always having good ſucceſs, are ſometimes put to their ſhifts, but how far it ſtands with the dignity of the High Courts to countenance, or in truth afford protection to ſuch ſhifts, we leave them to conſider, but no man can conceive otherwiſe, than that thoſe courſes muſt needs more weaken the Shipping of the Kingdom, than divers Ordinances and Conſtitutions intended for the maintenance thereof can poſſibly advance the ſame. Beſides the decay of Shipping, theſe things conduce to the impoveriſhing of Mariners who are the life of Shipping, for Freight is ſaid to be the mother of Wages, and the Owner loſing his Freight, the Mariner cannot ſo well obtain his Wages, and in conſequence muſt betake himſelf to ſome other courſe of life.

The like inconvenience falls out in Trade and Commerce, when Prohibitions are granted for Contracts, or things done *in partibus exteris & tranſmarinis*, The Merchant if he can avoid the Admiralty where he muſt anſwer upon Oath, and proof may be made by Commiſſion, thinks himſelf ſecure from any danger at the Common Law. And although it may be ſuppoſed that remedy may be given in the Chancery, yet howſoever it is poſſible it is not uſual for that Court to ſend Commiſſions into Foreign parts, and the pretence is for the right of Juriſdiction in the King's Courts of the Common Law, without reſpect to the Chancery, to which Sir *Edward Coke* ſeems to be no great friend.

FINIS.